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# DENTAL SUPPLIES



Investigation into an Alleged Combine  
in the Manufacture and Sale of  
Dental Supplies in Canada



REPORT OF COMMISSIONER, COMBINES INVESTIGATION ACT,

DEPARTMENT OF JUSTICE

OTTAWA, JULY 28, 1947

*Price, 25 cents*

OTTAWA

EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,  
KING'S PRINTER AND CONTROLLER OF STATIONERY

1947





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# REPORT TO THE MINISTER OF JUSTICE

COMBINES INVESTIGATION COMMISSION

DEPARTMENT OF JUSTICE

OTTAWA

July 28, 1947.

RIGHT HONOURABLE J. L. ILSLEY, K.C.,  
Minister of Justice,  
Ottawa

Sir,—I have the honour to submit to you the following report of an investigation under the Combines Investigation Act into an alleged combine in the manufacture and sale of dental supplies in Canada. This investigation has been made pursuant to a letter of June 5, 1946, from the former Minister of Justice, the Rt. Hon. Louis S. St. Laurent, directing that inquiry should be made with a view of determining whether a combine exists in connection with the manufacture, distribution and sale of dental supplies of all kinds, including artificial teeth, dental equipment, gold and other metals for dental use, and sundry merchandise. The activities of the Canadian Dental Trade Association and the operations of its members, who conduct more than 85 per cent of the business in dental supplies, have been the principal matters examined during the investigation.

Hearings were held in Toronto, Ottawa and Montreal before Mr. A. S. Whiteley, Deputy Commissioner, during November and early December 1946. Thirty-two witnesses were examined on oath during the thirteen days of hearings. On February 25 and 26, 1947, further hearings were held in Ottawa, before me, during which argument was heard from counsel for the member firms of the Canadian Dental Trade Association and from counsel for the Commission.

Examination of the witnesses throughout the hearings was conducted by Mr. Peter Wright, who acted as counsel for the Commission, and I should like to acknowledge here the able services which he rendered.

## I. DENTISTRY AND PUBLIC HEALTH

The importance of dentistry, in its preventive and restorative aspects, has long been recognized by those concerned with public health. Much has been accomplished in Canada in recent years in obtaining recognition by the general public of the need for adequate dental attention. Provision has been made by many school boards for examination and treatment of pupils at schools. During the war compulsory dental services were maintained for all the armed forces. Increasing attention is being given to the provision of dental clinics by public institutions such as hospitals and the provincial and federal governments. A few private business firms have established such clinics for their employees.

A great deal, however, remains to be done in this field. The accompanying table shows that throughout Canada in 1946 there was one dentist to every 2,633 persons. This varied among provinces, most of the provinces having one dentist to over 3,000 or even 4,000 of the population while others had one to approximately every 2,000 persons. In 1943 the Canadian Dental Association informed the Special Committee of the House of Commons on Social Security that "the present number [of dentists] are only capable of rendering adequate dental service to about one-quarter of the population".

### DISTRIBUTION OF CANADIAN DENTISTS<sup>1</sup>

(as at December 31, 1946)

<i>Province</i>	<i>Total Number of Dentists</i>	<i>Total Number of Persons per Dentist</i>
Prince Edward Island .....	28	3,286
Nova Scotia .....	180	3,450
New Brunswick .....	114	4,105
Quebec .....	1,041	3,421
Ontario .....	2,081	1,924
Manitoba .....	244	3,016
Saskatchewan .....	195	4,333
Alberta .....	264	3,128
British Columbia .....	455	2,086
Canada .....	4,602	2,633

The many public institutions which have been actively engaged in fostering the dental education of the public and in attempting to ensure the provision of dental services have intensified their efforts since the end of the war. Nearly all the provincial governments have shown an increasing interest in the promotion of dental education and treatment, and various new programs have been launched or are in preparation. Such work will undoubtedly continue and be expanded in the normal course of events, and will result in an even wider public demand for dental services.

It is apparent that the provision of such services at the lowest possible cost to the public is of vital importance. The dentists in active practice in 1945, either on their own behalf or as public servants, used dental goods to a retail value of \$4,863,000. On the basis of the number of dentists reported in 1946 this would be an average of \$1,057 per dentist. Part of this undoubtedly represented office equipment and supplies which have a continuing use and are replaced at infrequent intervals. On the other hand, the estimated average is probably quite low because at the time there were approximately 1,000 dentists

<sup>1</sup>Source: Unpublished statistics compiled by Department of National Health and Welfare, Ottawa.



in the armed forces, and a substantial proportion of their supplies were obtained from sources other than the Canadian dental dealers. As larger numbers of dentists emerge from the universities, permitting more adequate provision of dental services, so the annual requirement for dental goods will increase. It is estimated that the number of new graduates will double by 1949 and treble by 1951. It appears likely, therefore, that the enlarged demand for dental goods will continue during the readjustment period and that, from a longer point of view, there will be a consistent increase in such requirements, as the needs of the public for dental services are met to a more adequate extent.

## II. THE DENTAL TRADE

### 1. Its Functions

The business of the dental trade and industry is to manufacture and distribute all the supplies and equipment required in the practice of dentistry. Although the ultimate consumers are the general public who receive dental treatment, for present purposes consumers may be regarded as those who use dental goods in the course of their work. These are dentists and dental students, laboratories engaged in providing technical services to dentists, and public and private institutions which employ dentists and operate clinics.

The normal system of distribution begins with wholesale sales by manufacturers to dental dealers, who in turn sell at retail through their depots to the various consumers. A large proportion of these retail sales are made by the dealers' salesmen. In the cities and towns where depots are maintained orders may be telephoned and filled by messenger service and some sales are made over the counter.

Commodities entering into the dental trade are usually classified as precious metals, artificial teeth, equipment and sundry merchandise. Equipment includes the principal apparatus found in a dentist's office, such as dental chairs, units, X-ray apparatus, sterilizers and cabinets. Sundry merchandise is chiefly the supplies which are consumed in single treatments, such as filling materials, anæsthetic and denture materials, but also includes small instruments and apparatus which have a continued use.

### 2. The Canadian Trade

The dental trade and industry in Canada is characterized by the dominance of those members of the American Dental Trade Association (A.D.T.A.), who have been organized into a regional group known as the Canadian Dental Trade Association (C.D.T.A.). Forty-two establishments are reported in the 1941 Census of Canada as being engaged in "wholesale" trade in dental supplies. Of these, thirty were controlled by association members, consisting of twenty-seven retail outlets, one head office entrepot and two manufacturer-importers. The remaining twelve were independent dealers. Sales in 1941 as shown in the census report amounted to \$4,184,000 but this total contains some duplication resulting from sales among the firms included. After allowance is made for this duplication it appears that eighty-eight per cent of the retail sales of dental supplies in that year were made by dealer members of the association. In 1945 retail sales in Canada were approximately \$4,863,000 and the sales made by the C.D.T.A. dealers accounted for eighty-seven per cent of this total. It is thus seen that although independents represent a significant proportion of the total number of dealers, their share of the business is very small, being only twelve per cent in 1941 and thirteen per cent in 1945.

Domestic production of dental goods is significant only in certain lines, chiefly precious metals, anæsthetics and a few sundries. Artificial teeth, the largest single item in dental supplies, are imported. A minor amount of equipment is made in Canada. The relative importance of the four main divisions of dental products is indicated in the following analysis of Canadian retail sales made by the A.D.T.A. in 1944, all dealer members reporting:

Precious metals .....	17·90 per cent
Teeth .....	26·66 per cent
Equipment—new and used .....	13·13 per cent
Sundry merchandise .....	42·31 per cent

There are no statistics published in Canada relating to manufacture and importation of dental goods which would provide a quantitative statement of the sources of supply. The oral evidence shows, however, that the bulk of dental goods sold in Canada is imported from the United States, a small proportion from the United Kingdom and a negligible part from other countries.

### 3. International Aspects

As the Canadian dental trade is dependent to such a large extent upon the sale of imported goods, the organization of the trade in other countries and the inter-relationships which exist among corporate enterprises are of significance. This is particularly true with regard to the United States, not only because the Canadian Dental Trade Association is part of the American Dental Trade Association but also because of the close financial and business relations which exist between Canadian and American dental firms. The rules and practices of the dental trade association in the United Kingdom reflect a marked similarity between its aims and those of the associations in the United States and Canada. As information in Canada with respect to international business and financial relationships among foreign dental companies is limited, it has not been possible to make any detailed examination of these aspects of the trade. The particulars which have been obtained and which are here summarized are considered to be indicative rather than exhaustive of international arrangements in this field.

A. GENERAL. The manufacture of dental goods throughout the world is characterized by the predominance of a few leading manufacturers associated together and with domestic dealers in various trade associations. In a number of cases these manufacturers are parties to restrictive arrangements affecting the distribution of their products. Independent dental dealers in Canada thus find they are unable to secure supplies from many manufacturers in other countries, either because they do not sell in the Canadian market or because they deal only with association members.

The S. S. White Company, a leading American company, has wholly-owned subsidiaries in Great Britain, Canada, Australia and Brazil. It is an original member of A.D.T.A. and its subsidiaries in Canada and the United Kingdom are members of the Canadian and British associations.

The Amalgamated Dental Company Limited of London, England, the dominant British dental firm, began as Claudius Ash, Sons and Company Limited in 1905. This company had subsidiaries in the United States and Canada, both of which still have a corporate existence. The business of the Canadian subsidiary was merged with that of Temple-Pattison Company in 1922 to form The Ash-Temple Company Limited, in which Claudius Ash Sons and Company (Canada) Limited has continued to hold a stock interest.

In 1924 Amalgamated adopted its present name following a merger of the Ash business with that of de Trey and Company Limited. It owns practically all the shares of Western Dental Manufacturing Company, another British manufacturer. It is the owner of a substantial amount of the common stock of Dentists' Supply Company of New York, and distributes this company's products in Great Britain, Continental Europe and Australia. It is a party to reciprocal arrangements with the L. D. Caulk Company of Milford, Delaware, for the distribution of their respective supplies in specified countries.

Amalgamated owns 31 per cent of the issued stock of Zahnfabrik, Weinand Sohne and Company of Kreis Offenbach/Main, Germany. Dentists' Supply Company of New York owns 45 per cent of the remaining shares. Prior to the war Zahnfabrik exported over a third of its production of artificial teeth made from both acrylic resin and porcelain, its British agent being Dentema Company, London.



The de Trey Company of Waldshut, South Germany, produces a number of products which are the proprietary articles of the Amalgamated company, but we have no information about the arrangements under which this is done. It is also not known whether there are any financial affiliations between the de Trey companies in Switzerland and France and Amalgamated.

Standard Zahnfabrik, manufacturers of artificial teeth in Constance, South Germany, are owned to the extent of 96 per cent by Dentists' Supply Company of New York, the remaining 4 per cent being owned by Mr. John E. Frey, an official of the de Trey company of Zurich, Switzerland. Until the end of the war this company distributed its entire output through the German de Trey company.

Dentists' Supply Company of New York, in addition to its financial relationships noted above, also owns two companies in the United States, Standard Dental Manufacturing Company and International Tooth Company. It supplies practically all the artificial teeth which are distributed throughout Canada by dealer members of C.D.T.A.

Ritter Company Incorporated, operating an equipment factory at Rochester, New York, also owns 96 per cent of the capital stock of Ritter, A. G., a German corporation. It has wholly-owned subsidiaries in England and Argentina. Under exclusive arrangements with certain members of C.D.T.A. it supplies a large part of the dental equipment sold in Canada.

In a study prepared for the U.S. Temporary National Economic Committee investigating the concentration of economic power, it was indicated that international agreements affecting trade in dental goods were known to have existed during the period 1920 to 1940.<sup>1</sup> Professor Ervin Hexner in a recent book<sup>2</sup> states:

"Reliable sources list among collective marketing controls the international cartel for dental supplies which has members in Germany, England, France, Liechtenstein, Austria, Switzerland, Czechoslovakia and United States. It was established in 1923 for an indefinite period."<sup>3</sup>

**B. THE BRITISH ASSOCIATION.** The Association of Dental Manufacturers and Traders of the United Kingdom was apparently formed subsequently to A.D.T.A. which had been consulted as early as 1897 in connection with attempts in England as well as in other countries to form trade associations along similar lines, and had been requested to supply copies of its rules and constitution.

The rules and by-laws of the U.K. Association in effect in 1932 were obtained in the course of the inquiry. These show that its objects included:

"(a) To impose such restrictive conditions on the conduct of the business of Dental Manufacturers and Traders (hereinafter called 'the Trade') as may by the Association or its members be deemed expedient."

"(m) To do all such other things (including affiliation to any other Association), whether in restraint of trade or otherwise, as are incidental or conducive to the attainment of all or any of the above objects."

A report issued by the U. S. Department of Commerce described the work of this association and assessed its success in the following terms:

"The Association of Dental Manufacturers and Traders of the United Kingdom (1 Warwick Street, London, W. 1) has been formed for the purpose of fixing prices and preventing any dental supplier from underselling anyone else in the trade. This appears to be the sole function of the organization, and thus far it has been successful in keeping a standard list price for all dental supplies over the entire country."<sup>4</sup>

In 1932 the British association had two classes of members, ordinary and affiliated. Ordinary members were those engaged in the trade and industry in the United Kingdom, affiliated members being foreign manufacturers. Condi-

<sup>1</sup> T.N.E.C. Monograph No. 21. Competition and Monopoly in American Industry. U.S. Government Printing Office, Washington, 1940, p. 219.

<sup>2</sup> Ervin Hexner: International Cartels, University of North Carolina Press, 1945, p. 355.

<sup>3</sup> Czechoslovakia Cartel Book, p. 458; Friedlander Kartell, p. 342. Cited by Hexner.

<sup>4</sup> World Trade in Dental & Surgical Goods. Trade Promotion Series—No. 204, U.S. Dept. of Commerce, Washington, 1939, pp. 167-168.

tions and terms of membership were determined by the association in annual meeting but the election of any applicant was at the discretion of the Council of the Association. The maintenance of fixed retail prices was a rule of the association and strict conditions of bookkeeping were prescribed. Terms of sale for hire purchase transactions, maximum quantity discounts, cash discounts, terms of sale to universities and hospitals, were established as rules of the association. Provisions were made for complaints regarding infringement of the rules, and penalties were laid down in the form of stop lists, fines and expulsion of offending members.

This general pattern of price maintenance and restrictive dealing shows a marked similarity to the practices which were developed by A.D.T.A. and which have been in effect in C.D.T.A. without the penalties, throughout the period covered by this investigation.

C. THE AMERICAN DENTAL TRADE ASSOCIATION. The A.D.T.A. was founded in 1882, membership being recruited from among the leading manufacturers and dealers in the United States. Its existence has been continuous and since the turn of the century it has included in its membership a number of Canadian companies.

To mark its fiftieth anniversary it published, in 1931, an official history entitled "*Fifty Years of the A.D.T.A.*" which affords an insight into the objects for which it was established and thus provides a basis for comparison of its present activities as demonstrated in the affairs of the Canadian group.

The basic organization of A.D.T.A. has been relatively unchanged since about 1910. The most important factor in the conduct of its affairs has been the Executive Board, which has included the retiring president, the three elected officers and the chairmen of the Manufacturers' and Dealers' Sections. It is said to act as a board of directors, meeting from time to time between annual meetings to deal with "numerous matters pertaining to trade affairs."

Membership is divided into two main sections, manufacturers and dealers, which come together once a year at the annual meeting which is held in June. The manufacturers' section has been divided into commodity groups, and some indication of their function is given in the following quotation from *Fifty Years of the A.D.T.A.*:

"Discounts, terms of sale, bonuses, credit information exchange, maintenance of standards in product and in conduct, and all ethical practices are not, in the nature of things, topics to be considered once, voted, settled, and thereafter forgotten if convenient. But, in the ever-changing kaleidoscope of business, we must distinguish clearly those things which are basic and hold firmly to them . . . But here again the fundamental principle for having a manufacturers' section must be kept in mind: each member is in honour obligated to conform to existing standards and resolutions until they, by due procedure, have been superseded."

The dealers' section is divided into sectional dealers' groups of which there are now nine, one of them being the C.D.T.A. A great deal of evidence with regard to this group has been examined and will be discussed below. The general activities of the dealers' section have been summarized in the following words in the official history:

"Among the achievements of the organization have been the elimination of the costly system of peddling from trunk stocks, the establishment of the loose-leaf catalogue, the reforms on postage, excessive quantity rates, and other measures that have been of vital importance to dealers' success.

Of vital importance to the life and progress of the Dealers' section are the maintenance and function of sectional dealer clubs whose frequent meetings afford opportunity for conferences on details and for arriving at intelligent opinions. Thus many sectional ideas may be developed into plans of national value."

This book also indicates clearly that when A.D.T.A. was founded in 1882 one of its two principal objectives was to eliminate price competition among its dealer members. In an announcement published in July, 1882, A.D.T.A. stated that it was seeking



"... to bring the dental trade to the one-price system on the same goods,—a fair and just system which, once established will give assurance to each customer that he is paying the same price for the same goods that his neighbor pays; and that without loss of time or temper in canvassing among different dealers."

In 1889 it made a further public statement as to its activities:

"There is but one rule of the association that bears at all upon prices. Manufacturers, who are in almost every instance retailers as well, fix the retail prices of their own goods, as they always did, but the members who handle those goods agree to abide by the manufacturers' prices, which formerly they did not always do."

The other main purpose of the association was to confine the trade in dental goods to members of A.D.T.A. This policy is described as follows:

"The early days of the association saw another practice now obsolete: the confining of trade within the association. This meant that no association manufacturer would sell to other than an association dealer, and, on the other hand, the dealer would handle only goods produced by association manufacturers. . . .

Membership in the Association was a very vital matter because of this ruling, since it meant the difference between business success and failure. Every attempt was made to have dealers and manufacturers of good standing join the Association and this policy continued to add to its power."

The A.D.T.A. was established before the passage of the Sherman Act in 1890 and its early activities were thus not subject to control by federal antitrust legislation. In time, however, A.D.T.A. found it desirable to modify the formal association rules. The official history recounts that:

"There never was anything in our rules or in the conduct of the affairs of our Association that could be considered as in violation of good business; but, owing to later interpretations of the various anti-trust laws and being desirous of conducting a law-abiding organization, we, by advice of counsel, eliminated every rule or custom that might be construed as being in violation of these laws. To this day, as all know, we do not have a single rule, or requirement, directly or indirectly, regulating prices, the source of supply of goods, or their distribution."

The same principle is expressed in the formal constitution of the association, which specifically disavows any practices in restraint of trade and also has the appearance of affording ready access to membership to any firm engaged in the dental trade. Such modification of the Articles of Association of A.D.T.A. was most recently displayed in 1942, a revision being made on advice of counsel when a bill providing for the registration of trade associations was before the United States Congress.

In discussing certain features of A.D.T.A. and C.D.T.A. in a later section it will be demonstrated that the formal abandonment of restrictive provisions in the rules of the association did not cause substantial modifications in its policies and practices. Efforts made to maintain the objectives in the face of legal difficulties is indicated in the following excerpt from the official history:

"From the very beginning of our organization, the Executive Board has had a busy time of it, and as the years rolled on and various legal phases appeared on the horizon, the conduct of our affairs became more and more arduous, in order that your organization might be perpetuated and your business preserved."

In the early history of the A.D.T.A. the principles of price maintenance and association dealing and other practices were enforced in a forthright manner. A Grievance Committee was established with power to levy fines, and to suspend and expel members for infractions of the rules. The committee and the rule confining trade to association members were said to have been abandoned in 1913, and direct enforcement of the price maintenance rule long before 1931.

The Grievance Committee was, however, succeeded by an Arbitration Committee, which still existed in 1931. Although this body had no power to levy fines, each party to arbitration proceedings was required to sign an agreement agreeing to abide by its decisions and to pay the whole or any part of the expenses of arbitration.



The need for rigid enforcement was apparently much reduced by this time. In *Fifty Years of the A.D.T.A.* the founder and first secretary of the organization wrote:

"Today we almost wonder why there should have been any necessity for forming an association. Now that the trade has been educated and raised to a higher plane, our members realize not only the importance and value of conducting their business with honor and integrity, but the absolute necessity, from a financial standpoint, of doing so."

Another contributor to the official history wrote:

"It is now possible to make a recommendation as to sound practices and, since these recommendations are based on good business conduct, the majority will follow them."

The Arbitration Committee does not appear by name in the most recent publication of the A.D.T.A. which outlines its organization, and the 1942 revisions of the Articles of Association eliminated the provision providing for arbitration. Nevertheless, the current articles adopted on June 23, 1942 still provide that:

"The Executive Board may suspend any member for conduct contrary to the Articles of Association, or which would make him ineligible as an applicant for membership . . ." (Article V, Sec. 5)

An Advisory Committee was set up in 1902 to adjust differences between members, and to solicit membership among manufacturers of important specialties or to arrange that proper protection in price be afforded. In the words of the A.D.T.A. history:

"From this it is apparent that the Committee was something of a cross between the present day Arbitration Committee and the Welfare Committee with a few other duties thrown in for good measure."

In 1931 a Discount Committee was very active. Its purposes were to combat the tendency of dealers to offer quantity rates to the dentist and to secure increased discounts from manufacturers. In 1939 this committee was still functioning for the same purpose, as shown by the following quotation from a letter of January 25, 1939, from W. V. Grier of the L. D. Caulk Company of Milford, Delaware, to R. O. Bailey, then managing director of its Canadian subsidiary:

"I happen to be chairman of the Sundries Group of the Manufacturers' Section, and during the year which ended at the Del Monte meeting, our group met seven times. We discussed the matter of packaging, premiums, and the like, and drafted the enclosed, which all of our manufacturers in the States are not only familiar with, but apparently are abiding by. From recommendation of counsel, this was not made a part of the minutes of the meeting of the Manufacturers' Section. This recommendation, therefore, might be considered as still 'in committee'. However, it expresses the thoughts of our group."

The enclosure referred to was entitled "Proposed Recommendations of the Sundries Manufacturers' Group Re: Methods of Merchandising". It is dated February 14, 1938, and includes the following:

"The grouping of items on which quantity rates are not published when made into an assembly exclusively of their own, should carry the Discount Committee's recommendations regarding profits to dealers and laboratories and a maximum saving to the dentist of not more than 16½ per cent.

On bulk sales including laboratories and institutions, a minimum profit to the dealer of 15 per cent is recommended."

Another committee which existed in 1931, and had to do with prices, was engaged in the production of lists of values of used equipment. Still another developed a loose-leaf catalogue in which space was allotted to each manufacturer for his own price lists.

As late as 1942 a special assistant to the Attorney General of the United States testified before the U.S. Senate Committee on Patents:

"It is reported that 75 to 80 per cent of the dental retail dealers are members of the American Dental Trade Association which apparently has restrictive provisions against retail price cutting by its members."

### III. THE CANADIAN DENTAL TRADE ASSOCIATION

The Canadian Dental Trade Association is a regional group of the American Dental Trade Association, and was formed in 1916 as the Canadian Dental Dealers' Club but some years later adopted its present name. Some of the original members had been in the parent organization since early in the century. It is an unincorporated body maintaining an office at 172 John Street, Toronto.

Each member of the C.D.T.A. is either a Canadian member of A.D.T.A. or a subsidiary of an American member. By arrangement fees are collected by C.D.T.A., one-half being retained to meet the expenses of the Canadian group and the remainder transmitted to A.D.T.A. As members of A.D.T.A. the Canadian firms, by the terms of its Articles of Association, are required to subscribe to these articles. C.D.T.A. members generally attend the annual meetings of the parent association, which are held in June, sometimes in Canada. Although members of C.D.T.A. secure certain trade advantages which result from membership in the American association, they have an independent status with respect to Canadian business. This is particularly the case in association arrangements in Canada, with respect to prices, terms of sale and other matters closely related to competition in price.

Throughout the period covered by available records C.D.T.A. has usually met in annual general meeting at Toronto during the first half of the year and special general meetings or semi-annual meetings have been held in Montreal towards the end of the year. Certain formal resolutions, giving effect to the work of the committees or instituting general policies, have been adopted at these meetings. Most of the members have been represented at the meetings, the outstanding exceptions being British Columbia Dental Supply Company Limited and Maritime Dental Supply Company Limited, both small companies located at a distance from the main trade centre. However, Maritime has been represented at nine meetings during the sixteen-year period and B. C. Dental at two.

The executive officers of the association throughout have been representatives of the four Toronto dealers, except that vice-presidents were elected either from Paterson & Paterson Incorporated and/or Maritime each year from 1930 to 1941, when the practice was dropped. None of the manufacturing representatives has held office, except during recent years when D. L. Lawrie continued his appointment as Secretary after leaving the employ of The Dominion Dental Company Limited to become managing director for The L. D. Caulk Company of Canada Limited. Control of association policies has been effected by various committees within the C.D.T.A. which will be described in Section V in the discussion of prices and terms of sale.

#### 1. Membership

Unlike other regional groups of A.D.T.A. which are subdivisions of the dealers' section, the C.D.T.A. includes in its membership both manufacturers and dealers. The significance of this fact lies in the nature of the joint decisions reached at C.D.T.A. meetings, at which both manufacturers and dealers are present and vote. A brief reference is made to each of the present members of C.D.T.A.

The dealers are:

*The Ash-Temple Company Limited* (Ash-Temple), the leading dental dealer in Canada. In addition to its main depot in Toronto, it has ten branch depots located in Montreal, Ottawa, Hamilton, London, Winnipeg, Regina, Calgary, Edmonton, Vancouver and Victoria. It began in 1895 as a small business

in the name of H. P. Temple, deceased president of the Company. In 1902 this business was amalgamated with the Pattison Dental Manufacturing Company of Montreal and became the Temple-Pattison Company Limited. Between 1902 and 1916 the company purchased The C. H. Hubbard Company, The Canadian Dental Supply Company, The International Dental Supply Company, the business of Dr. Henry Rea of London, Ontario, the retail business of National Refining Company Limited and the Saskatchewan Dental Depot of Regina. Temple-Pattison Company was a member of A.D.T.A. from 1905 until the business was amalgamated with that of Claudius Ash Sons & Company (Canada) Limited in 1922, to form The Ash-Temple Company Limited. The new company has been a member of A.D.T.A. throughout its history.

*The British Columbia Dental Supply Company Limited* (B.C. Dental), which operates a dental depot at Vancouver, and joined the A.D.T.A. in 1928.

*The Dental Company of Canada Limited* (Denco), the purchasing and management unit for four wholly-owned dealer subsidiaries, which have a total of eight depots throughout Canada. The company originated in 1916 when it purchased the retail part of the Canadian business of the S. S. White Dental Manufacturing Company of Philadelphia. Several branches were opened between 1923 and 1935 and in the latter year subsidiaries were incorporated to take over these branches. In 1936 Denco (Alberta) Limited was incorporated to operate in that province. In 1941 the present company was formed. The predecessor company was a member of A.D.T.A. from 1916 and the present company has also been a member throughout its history. The subsidiary companies, referred to below, and their branches are all registered with the A.D.T.A. as branches of Denco:

*Denco (Ontario) Limited*—In addition to its main depot in Toronto, this company has branches in Hamilton and Ottawa.

*Denco (Eastern) Limited*—This Company operates its main depot in Montreal and has a branch in Quebec City.

*Denco (Western) Limited*—This company has its main depot at Winnipeg, and one branch at Saskatoon.

*Denco (Alberta) Limited*—This company operates one depot at Calgary.

*The Dominion Dental Company Limited* (Dominion Dental), which in addition to its main depot in Toronto has branches at Windsor and Kingston. It is a wholly-owned subsidiary of Goldsmith Bros. Smelting and Refining Company Limited, which is affiliated with the American firm of a similar name. The American firm has long been a member of A.D.T.A. The Canadian Goldsmith company joined the A.D.T.A. in 1920 and operated a dealer business in dental goods until 1930, when Dominion Dental was formed to take over this business and succeeded to its membership in A.D.T.A.

*Maritime Dental Supply Company Limited* (Maritime), with main depot in Halifax and a branch at Saint John, N.B. It is a member of A.D.T.A. and with its predecessor companies has maintained such membership for about 45 years.

*National Refining Company Limited* (National Refining), which operates a dental depot in Toronto. Its chief business is as a dealer, but it lists products of its own manufacture including chairs, cuspidors, electric engines, head rests, lathes, stools, units and vulcanizing flasks. The manufacturing section also does repair and refinishing of equipment and gold refining. It has been a member of A.D.T.A. since 1925.

*Paterson & Paterson Incorporated* (Paterson), which operates a dental depot in Montreal, and has been a member of A.D.T.A. since its incorporation in 1934. Its predecessor company joined the association in 1909.



The manufacturers are:

*The L. D. Caulk Company of Canada Limited* (Caulk, Canada), having a small manufacturing plant and head office in Toronto. It sells to the dealer members the products of its parent company, The L. D. Caulk Company of Milford, Delaware (Caulk, U.S.), and a range of sundry merchandise packaged or manufactured at its Toronto plant. Its membership in C.D.T.A. is based upon the parent company's membership in A.D.T.A., which dates from 1882.

*Cook-Waite Laboratories Incorporated* (Cook-Waite), which has a packaging plant at Fort Erie North, Ontario. It is a branch of an American company which has its head office in New York. It manufactures and sells to C.D.T.A. dealers local anaesthetics, in bottles and ampules, under the brand names of Novocaine, Pontocaine and Cobefrin. The American company operates the merged business of Cook Laboratories Incorporated and Antidolar Manufacturing Company Incorporated, both subsidiaries of Sterling Drug Incorporated. Cook Laboratories of Canada Limited, another Sterling subsidiary, formerly engaged in the manufacture of anaesthetics, is no longer active, although its charter is still in force and its shares are in the hands of the Alien Property Custodian. Antidolar, Cook Laboratories and Cook-Waite have been members of the A.D.T.A. since before 1930.

*Equipment Manufacturing Company Limited* (Equipment Manufacturing), wholly-owned subsidiary of Ash-Temple located in Toronto. It is engaged in the manufacture of equipment which it sells to most dealer members of C.D.T.A., Ash-Temple taking the bulk of its output. An important part of its work lies in repair and refinishing of equipment. Its products are adapters for lights, hydraulic chairs, pedestal and reservoir cuspidors, spray heaters, head rests, operating stools, units, air-valves and vulcanizing flasks. Formal membership in C.D.T.A. is disclaimed by this company, but it was listed as a member on the C.D.T.A. letterhead and is regarded as such by the association secretary.

*Goldsmith Bros. Smelting and Refining Company Limited* (Goldsmith), engaged in the refining of gold and other precious metals which it sells to the dental trade and to the jewelry trade. A minority interest is still held by the Chicago firm of the same name, which is a long-time member of the A.D.T.A. It is located in Toronto and has one wholly-owned subsidiary, with head office in Montreal, engaged in the same business.

*Novocol Chemical Manufacturing Company of Canada Limited* (Novocol Canada), wholly owned by Novocol Chemical Manufacturing Company Inc. of Brooklyn, N.Y. The parent company joined the A.D.T.A. in 1940 and later in the same year the Canadian company was admitted to associate membership in C.D.T.A. In its Toronto plant Novocol processes and packages, in ampules and anestubes, local anaesthetics under the brand names, Novol, Monocaine and Procaine, distributed chiefly through the associated dental dealers.

*S. S. White Company of Canada Limited* (S. S. White, Canada), with its head office in Toronto, where it manufactures sundry merchandise on a small scale. Its business is largely the sale of products of its parent company, The S. S. White Dental Manufacturing Company of Philadelphia (S. S. White, U.S.) to the associated dental dealers. The United States concern joined the A.D.T.A. in 1882. Chief products sold by S. S. White are sundry merchandise such as alloys, cements, burs and small instruments, and equipment such as chairs, units, cuspidors and operating stools.

*Williams Gold Refining Company of Canada Limited* (Williams, Canada), owned jointly by members of the Williams family, who also control the Williams Gold Refining Co., Inc. of Buffalo, N.Y. (Williams, U.S.), and by Ash-Temple.

the latter company holding a 45 per cent stock interest. Williams, U.S., have been members of A.D.T.A. since 1921, and Williams, Canada, and its predecessor partnership have been members of C.D.T.A. since 1916. The American company produces a complete range of precious metal alloys for dental use sold by Williams, Canada, which also does some manufacturing and processing in its Fort Erie plant.

## 2. Dominance of Toronto Dealers

It has been stated above that the dealer members of C.D.T.A. sell most of the dental products used in Canada and that in 1941 and 1945 respectively their sales were 88 and 87 per cent of total Canadian retail business. The four Toronto dealers, through their retail depots and wholly-owned subsidiaries, were responsible for 75 per cent of total Canadian sales in 1941 and for 73 per cent in 1945.

Throughout the period 1930 to 1947 the same four firms have dominated the C.D.T.A. because of their volume of business and have controlled its activities through their membership on all committees. While the committees have normally presented their decisions to the general meetings of C.D.T.A. for approval, there are also numerous instances when their decisions have merely been communicated by letter to the outside members.

The following officers of C.D.T.A. for the year 1946-1947, with the exception of Mr. D. L. Lawrie, to whom reference has already been made, were representatives of the four Toronto firms:

President	—P. N. Alexander (Dominion Dental, Goldsmith)
Vice-President	—Dr. H. A. Thompson (Denco)
Treasurer	—William McTavish (National Refining)
Secretary	—D. L. Lawrie (Caulk, Canada)
Price Book Secretary	—J. K. Laird (Ash-Temple)

#### IV. POLICY OF RESTRICTIVE DEALING

The policy of the A.D.T.A., as laid down when the organization was formed, was to restrict sales of dental goods to the dealer members of the association, and to require these dealer members to buy, as far as possible, from association manufacturers exclusively. The formal rule to this effect was said to have been abandoned in 1913, and the current articles of association declare that all members have the right to determine their business policies independently. The restrictive policy has been continued to a very considerable extent by the leading association manufacturers and dealers. It appears to be one of the accepted principles of membership and the basis of relationship among the members of the association.

##### 1. Restriction of Membership

Membership in C.D.T.A. is open only to members of A.D.T.A. or companies which are subsidiaries of such members.

Conditions of membership in A.D.T.A., as set out in its Articles of Association, provide that any firm engaged in the manufacture or distribution of dental supplies or equipment is eligible to apply for membership. Such an applicant is required to file his application in writing together with his registration fee and dues for the current year. The application is referred to the Committee on Membership, which in turn reports upon it to the members. A vote of at least two-thirds of the members present at a regular or special meeting is required for election of the applicant to membership. There is evidence that in practice applicants are required to submit detailed business statements and to send a representative to attend the annual meeting wherever it may be held.

No new Canadian dealer member has been admitted to either association since 1928. During the period 1930 to 1947 two manufacturing companies were admitted to C.D.T.A. membership, both being automatically accepted because their parent companies were members of A.D.T.A. One of these firms, Novocol, Canada, had made application to C.D.T.A. prior to its parent company's admission to A.D.T.A. and was not accepted.

Oral evidence from some independents of long standing in the trade is to the effect that they have never made application to the association because in the light of their knowledge of the trade they felt certain that such an application would be refused. One Canadian independent, Casgrain & Charbonneau Limitée of Montreal, has made several unsuccessful attempts over a period of years to join A.D.T.A. and A. & P. Dental Supply Incorporated of Montreal and Quebec explored the possibility and was dissuaded from applying by the C.D.T.A. secretary.

Casgrain & Charbonneau is a large and reputable wholesale establishment in Montreal dealing primarily in drugs and pharmaceuticals. It is also engaged in the sale of surgical and dental supplies. The dental department has been established for more than twenty-five years. This company is unable to obtain on trade terms many standard products in demand by its customers, owing to its inability to join the association. It has made repeated efforts to join both associations and has carefully tried to comply with the A.D.T.A. requirements by offering payment of dues, by attending the annual meeting and by submitting business statements. Its first application was made to A.D.T.A. shortly after the first Great War and its most recent were made to A.D.T.A. in 1938 and to C.D.T.A. in 1945. It considered applying to A.D.T.A. in 1942 and tried to gain the support of Novocol, U.S. This company decided against sponsoring the



application when advised by their Canadian manager that there would be such opposition from the Canadian dealers that its refusal was certain.

A. & P. Dental Supply Incorporated is a company which was formed in Montreal in 1945 by Messrs. Armand Aubry and Rene Pettigrew. These men had been employed by Denco and Denco (Eastern) throughout most of their business lives and had command of considerable capital. The C.D.T.A. secretary, although aware of their experience and ability to finance a sound business, informed them that membership in C.D.T.A. was based upon prior membership in the parent association in the United States and dissuaded them from applying to that body. It is clear from the documentary evidence that the true reason for limiting entry of dealers into the association is to protect the interests of existing members. The evidence of Mr. C. A. McKenna, emphasized this when he said in explanation of his refusal to supply the new firm with S. S. White products:

"As I have said before and as I continue to say, three depots in Montreal is ample to properly take care of the number of dentists and institutions they have there."

(Evidence, p. 1591)

## 2. Resolution on Restrictive Dealing and Its Application

The maintenance of a closed association of dealer members in Canada appears to be a definite part of measures taken to confine the trade in dental supplies to members of the association. In the Canadian dental trade, only the dealer members of C.D.T.A. are given what is referred to as "trade recognition" by the A.D.T.A. manufacturers, and sales to other than recognized dealers have been regarded by the Executive Board as "an unfair and uneconomic trade practice" known as "jobbing".

As already shown, the principle of exclusive dealing was one of the two main instruments of control upon which the A.D.T.A. was founded. It was still a part of the association's policy in 1930, as shown by the report of an address to C.D.T.A. in December of that year by Mr. George Lilly, Managing Director of A.D.T.A. The following is an extract from the minutes:

*"Jobbing:* The Executive's interpretation on this is as follows; 'Jobbing is the sale of a manufacturer's product at a trade discount by one individual, partnership, or corporation to another, when the purchaser does not enjoy trade recognition from the manufacturer whose goods are sold.

'The Executive Board considers it an unfair and uneconomic trade practice for an individual, partnership, or corporation to sell dental merchandise to persons or corporations not engaged in the dental supply business, or to sell such dental merchandise in quantities intended for resale.'"

(Exhibit 14)

The principle embodied in this interpretation has been regarded by C.D.T.A. as a standing resolution of A.D.T.A., and was referred to as such in the C.D.T.A. minutes of 1936.

Some indication of the importance of this policy is afforded by the fact that in addition to the A.D.T.A. action, the members of C.D.T.A. saw fit to adopt it separately within their own group. They did this at the meeting of December 1930 as shown by the following resolution, which was reaffirmed in 1936 and 1938:

*"The following resolutions were adopted:*

*Jobbing:* Resolved that this Association go on record as being opposed to the jobbing of dental goods and hereby accepts the interpretation placed thereon by the Executive Board of the American Dental Trade Association."

(Exhibit 14)

The meaning of the Executive Board's definition of jobbing adopted by C.D.T.A., presented some difficulty to the witnesses examined at the hearings. Most of them were in agreement that the first paragraph quoted above was an acknowledgement of the fact that many manufacturers sell their goods to distributors on the understanding that these distributors will not resell them to

dealers to whom the manufacturer will not sell. Several witnesses understood the second paragraph to be aimed at preventing goods being sold to laboratories or drug stores for resale by them. Beyond this the oral evidence was of little assistance. On the broader aspect of the question, however, the following evidence by Mr. D. L. Lawrie should be noted:

"Q. Can I put it this way, that this resolution is to declare the policy of the association, that association goods are not to be sold except to association dealers.

A. Yes; and yet there are exceptions. . . ." (Evidence, p. 592)

Continuity of the standing resolution on jobbing has been established by two later C.D.T.A. documents. The agenda of a meeting held on April 18, 1941 (Exhibit 42) contains an item: "Dealer supplying outside houses with A.D.T.A. supplies." Mr. Lawrie was asked the meaning of this item and answered:

"It is likely carrying out the jobbing resolution. It could have been a complaint, but I am not certain." (Evidence, p. 620)

In a paper read at a C.D.T.A. meeting on October 24, 1944, Mr. C. A. McKenna, Managing Director of S. S. White Company of Canada Limited, said in referring to the early years of A.D.T.A.:

"Dealers were loyal to the principles of the Association, and stocked only the products of manufacturers who were Association members . . ." (Exhibit 57)

Later in the same paper he asked a question and answered it:

"Is a dealer justified in introducing a non-association product in direct competition with a well-advertised and established material manufactured by an association manufacturer? Every A.D.T.A. dealer pledged his organization to uphold association principles; and at every meeting of the association he tacitly renews that pledge, yet he ignores this obligation every day of his business life. . . . Gentlemen, no association of interests, no compact, no agreement can be lasting if one of the contracting parties does all the getting and forgetting, and expects the other to do the giving and forgiving." (Exhibit 57)

This speech had been submitted in draft form to the C.D.T.A. secretary more than a week before it was delivered and was referred to in the minutes as "a paper on Dental Dealers' Responsibility toward A.D.T.A. manufacturers."

Whatever the minor exceptions, and reference will be made to some that have been found, it is abundantly clear that the agreed policy of the members of the Canadian association has been to restrict sales of manufacturer members, as far as possible, to dealer members of the Association; to restrain dealer members from selling to non-member dealers; and to have dealer members buy their supplies, as far as possible, from manufacturer members.

On the basis of the jobbing resolution and the Executive Board's interpretation of jobbing, there appear to be three types of transaction which are proscribed by agreement among the association members:

(a) Dental goods may not be sold "at a trade discount by one individual partnership or corporation to another, when the purchaser does not enjoy trade recognition from the manufacturer whose goods are sold." This prohibition can apply only to dealers, and if the manufacturers concerned follow a policy of selling only to association members and the dealer members observe this rule, it follows that all independent dental dealers are prevented from obtaining the goods of manufacturing members of the association from any source.

(b) Dental goods may not be sold "to persons or corporations not engaged in the dental supply business." It is clear that this does not apply to dealers, as their business is to sell to dentists, laboratories and other customers not engaged in the dental supply business. It must therefore apply to the manufacturers and if observed would prevent sales to drug stores, surgical houses, institutions operating dental clinics and all prospective customers with the exception of dental dealers.



(c) Dental goods may not be sold "in quantities intended for resale". This cannot apply to the sale by manufacturers to dental dealers, since this has always been the normal method of distribution. It must therefore be directed against sales by manufacturers to jobbing houses or others who might wish to purchase in large quantities at special discounts in order to resell to the dental dealers.

Jobbing houses have not developed in Canada and this last prohibition is not therefore directly applicable. With regard to the first two types, however, a mass of documentary evidence has been examined which shows that they have been observed with minor exceptions. The evidence demonstrates that they are bolstered by stringent restriction of membership and the exercise of influence by the dealer members upon manufacturers, both members and non-members, to supply only association dealers. Such representations to manufacturers are, of course, based upon the position of the dealer members as large buyers.

The carrying out of such a policy of restrictive dealing affects most seriously the independent competitors of the dealer members of the C.D.T.A. We have record of thirteen such independent firms in Canada, ten of them located in Montreal and Toronto.<sup>1</sup> Their inability to secure from the association manufacturers standard supplies, which are considered indispensable by the dental profession, has restricted them to a narrower specialization in goods produced largely by non-association manufacturers, often of the highest quality but without the great demand usually associated with A.D.T.A. goods. Some of these independents have had long and valuable experience in the trade, and are capable of rendering satisfactory service to the dental profession if they could have reasonable access to the normal sources of supply. They are restrained from such access by reason of the restrictive agreements entered into by members of the C.D.T.A.

### 3. Manufacturers' Refusal to Sell to Non-association Dealers

All independent dental dealers who gave evidence, with the exception of Mr. Aubry of A. & P. Dental Supply, stated that they were unable to purchase what are known as standard dental goods direct from A.D.T.A. and C.D.T.A. manufacturers or from Amalgamated Dental of London, England. In the case of A. & P. Dental Supply, Mr. Aubry said that while he was not buying directly he was able to secure certain standard lines from sources other than the association manufacturers, principally in the United States. Dentists and representatives of institutions confirmed that they were unable to obtain standard goods from independent dealers. The documentary evidence supports this contention, with certain exceptions which will be discussed below.

There are many letters from the files of C.D.T.A. and its members which illustrate the policy of the association manufacturers towards sales to independents, but the most complete single case deals with the efforts of A. & P. Dental Supply Inc. to obtain recognition in 1945. In a letter of June 2, 1945, to Mr. D. L. Lawrie, Mr. Rene Pettigrew wrote:

"Armand Aubry and I have pleasant memories of our visit with you in Toronto last week.

We are just about to leave for a tour around American Dental Manufacturers and would greatly appreciate receiving letters of introduction (*sic*) which you have so kindly offered us last week. One will be for the Caulk Company Officials and the other for the Membership Committee of the A.D.T.A.

As per your good advise (*sic*) we are not submitting our membership application to the A.D.T.A. at this time, but we feel that it will eventually be of help if we are already personally known to the members of that Committee."

<sup>1</sup> In Montreal, A. & P. Dental Supply Inc. (branch at Quebec), Canada Dental Supply Company, Casgrain & Charbonneau Ltée., Dépôt Dentaire de Montréal Ltée. (branch at Quebec), Empire Dental Company, Precious Metals Works (Canada) Inc.: in Toronto, Dental Products Corporation, Dental Trading Company, Ed. Green Dental Supplies Ltd., Arthur Levitt Dental Supply; in Winnipeg, Orthoform Western Dental Company; in Saskatoon, Midwest Dental Company (Holmes Turner); in Vancouver, Canadian Dental Supply.



Mr. Lawrie's reply, written on June 11, 1945, stated:

"I am enclosing a letter of introduction to Mr. Clayton Conklin, the President of our Company, whose office is located in the Widener Building in Philadelphia.

I have written Mr. Conklin telling him of your forthcoming visit and I sincerely hope that he will be in Philadelphia during your stay there. Of necessity he is away from Philadelphia considerably as he spends approximately two days each week in Milford as well as having to make frequent trips elsewhere.

It would be nice to have you and Armand visit Milford but as I explained to you, it is difficult to reach from either New York or Philadelphia and at the present time I do not think you would be justified in making the trip. Should you decide, however, to go to Milford, make contact there with Mr. Les March or Mr. Frank Waples, both of whom will be glad to make you welcome.

Mr. Steen is, I believe, a member of the membership committee and it might be well on this first visit not to attempt to contact too many of the members of the membership committee as such, for the reason that the committee personnel changes from year to year."

The letter of introduction addressed to Mr. Clayton Conklin at Philadelphia was furnished to Aubry and Pettigrew but on the same day Mr. Lawrie wrote directly to Mr. Conklin:

"Two former employees of DENCO (Eastern) LTD., the Quebec operating subsidiary of The Dental Company of Canada Limited, are determined to enter the dental business in Montreal.

Mr. Rene Pettigrew formerly managed the Quebec Branch of DENCO (Eastern) LTD. He was associated with Denco for eighteen years, is a well-educated, very likeable chap with a considerable amount of money. He left The Dental Company of Canada Limited, in which he has a stock interest in excess of \$15,000, to join his family's firm, Rioux & Pettigrew, operated by his brothers....

With Mr. Pettigrew's financial backing, they could not understand why they could not immediately buy standard goods. Mr. Pettigrew approached our Company and White's about a year ago and was told that we had sufficient distributors in the Quebec field and we could not, therefore, sell them our products. They have apparently decided to enter the non-association field, having received necessary government licence to start operations.

There are only 791 dentists now actually practising in the Province of Quebec. To serve them, there are three association companies, operating four depots, viz:

The Ash-Temple Company Limited, Montreal;

DENCO (Eastern) LTD., Montreal and Quebec;

Paterson & Paterson Inc., Montreal.

In addition to above there are six or seven non-association houses operating. The chief ones being:—

Depot Dentaire de Montreal Limitée at Montreal and Quebec;

Casgrain and Charbonneau, Montreal (a very large and wealthy drug concern);

Precious Metals of Canada Limited.

It would therefore appear that the Province of Quebec is more than adequately served.

Mr. Pettigrew and Mr. Aubry plan to shortly visit the United States and are anxious to meet various executives of association companies, even though they know they will not be recognized, but they are very optimistic and believe that within a year or two they will be accepted into membership.

At their request, I am giving them a letter of introduction to you, but I wanted you to have the above brief outline as to who they are and what they plan to do before you meet them. They were both very good friends of the Caulk Company and I would, therefore, appreciate it if you would see them when they visit Philadelphia."

Mr. Lawrie also wrote to Mr. L. I. March, another official of Caulk, U.S., located at Milford, Delaware, on June 13, 1945. He enclosed his letter to Mr. Conklin and commented on the possibility that Aubry and Pettigrew might also visit Milford. This letter is quoted in part:

"... I explained that a visit to Milford would not be of any value to them at this stage as it was quite impossible for us to increase out (*sic*) distributors at present. . .

I regret very much their decision to enter the non-association field as undoubtedly due to Armand's friendship with certain customers in Montreal, it follows that certain business now going to the association will go to non-association manufacturers. In my opinion the Montreal field is now overcrowded."

A similar procedure was followed by Mr. McKenna of S. S. White, Canada, who gave a letter of introduction to the vice-president of his parent company,

and then wrote an explanatory letter designed to ensure that his principals did not extend their recognition to A. & P. Dental Supply. This letter, written on June 8, 1945, stated:

"I have today furnished a letter of introduction to you and on behalf of Messrs. Rene Pettigrew and Armand Aubry. These young men were formerly employed by The Dental Co. of Canada—Pettigrew as Manager of their Quebec Branch and Aubry as chief clerk in the Montreal office. They have a none-too-clear idea of what is entailed in opening a dental depot. They had fully expected to buy our products as well as those of other association manufacturers, and expressed surprise when I informed them last week that it would not be possible for us to add them to our list of customers in Canada. Pettigrew has command of quite considerable capital and intends to put immediately \$25,000.00 into this venture. They do not take kindly to advice unless it should agree with their own ideas, and I expect they will make another attempt to have you sanction their purchase of S.S.W. products.

I am really sorry to see these boys determined on the course they have adopted as they almost certainly will lose some of the invested capital and their connection with the better side of the Dental Supply business. This is offered for your information."

(Exhibit 314)

The letter of introduction also dated June 8, 1945, stated:

"This will introduce Messrs. Rene Pettigrew and Armand Aubry. Both of these gentlemen were formerly employees of The Dental Co. of Canada. Mr. Pettigrew severed his connection more than a year ago, and Mr. Aubry quite recently.

These gentlemen have decided to enter the Dental Supply business and have formed their own company to operate in the city of Montreal, and selling non-association products. They are visiting United States cities for the purpose of establishing trade relations with manufacturers."

Other companies later sought the advice of Mr. Lawrie with regard to the status of A. & P. Dental Supply, and these letters show clearly their preoccupation with the question of whether the new company would be admitted to association membership. The correspondence on the subject establishes that failure to obtain membership would certainly result in inability to obtain supplies from these sources.

On August 7, 1945, the Burton Manufacturing Company of Chicago, which is not an association member but which produces certain specialties such as diagnostic lights which are given full support by the C.D.T.A., wrote Mr. Lawrie as follows:

"Recently we were visited in the States by Messrs. Armand Aubry and R. Pettigrew, who were seeking the Burton line for a dental supply company to be known as the A & P Dental Supply, Inc., at 1235 McGill College Ave., Montreal, Canada . . . a company which they were starting. Mr. Aubry showed us a letter from Dr. Henry Thompson of the Dental Company of Canada, in testimony to his fine character and ability.

It is my understanding that Ash-Temple and the Dental Company of Canada both have offices in Montreal and I wonder if it would be possible for you to tell me whether the A & P Dental Supply, Inc. has made application for membership in your association, and whether you can add anything to the few facts I have given here about this organization, that will enable us to make a decision about their application for our line. Any information supplied will be held in strict confidence, of course." (Exhibit 99)

Mr. Lawrie's answer dated August 10, 1945, was as follows:

"With reference to your enquiry regarding Messrs. Armand Aubry and Rene Pettigrew, these gentlemen have actually not applied for membership in the Canadian Dental Trade Association. It was pointed out to them that our membership is drawn exclusively from members of the American Dental Trade Association and that no advantage would accrue to them in being members of the Canadian Dental Trade Association.

It is, I understand, their attention (*sic*) to apply some time in the future for membership in the American Dental Trade Association. Both of these men have enjoyed good reputations (*in*) dental supply circles in Canada for a great many years, both being associated with The Dental Company of Canada Limited for a long period, one of them as manager of the Quebec Branch, and the other with the Montreal Branch.

The Ash-Temple Company Limited, The Dental Company of Canada Limited, and Paterson & Paterson Inc. operate modern dental depots in Montreal. In addition there are several other retail dental organizations operating in that city. There are 791 civilian dentists actually practising in the whole province of Quebec, and there are 198



from this province serving in the Canadian Dental Corps. These figures will possibly give you a fair picture of the manner in which the dentists in Quebec are being looked after by the Companies now established there."

The Ransom & Randolph Company, an A.D.T.A. member, wrote to Lawrie on August 14, 1945 and the relevant part of the letter is as follows:

"... Armand Aubry and Rene Pettigrew paid us a visit here in Toledo and as you can probably imagine they pushed pretty hard for immediate recognition. Now we are in receipt of a communication from their headquarters dated July 26th conveying a list of American manufacturers who are going to sell them, along with a conservative stock order.

The list of manufacturers represents the usual people who sell practically everybody, but names like Dentists Supply Company, Ritter Dental Mfg. Co., L. D. Caulk, Detroit Dental, and etc. do not appear.

You probably know how the Canada dealers feel about this A & P situation, Don, and if the information is not confidential we would surely like to hear from you. Also, what is the possibility of your recognizing this concern at a little later date, providing they will make a success of their business activities and behave themselves?"

Mr. Lawrie's reply written on August 21, 1945 was:

"With reference to Rene Pettigrew and Armand Aubry, who have established the A & P Dental Supply Inc. in Montreal, these two chaps bear a most satisfactory reputation in dental circles here. Both have been long associated with the industry but it is hard to realize just why they decided against the sincere advice and established another dental depot in Montreal.

There are 791 dentists actually practising in the Province of Quebec, and if all those in the armed services return to practice, which is very problematic, 198 more will be added.

To service this number of dentists, there are three association depots in Montreal carrying very representative stocks of association goods and well-equipped, both with outside salesmen and inside staff, to carry on business. In addition to these three established companies, there is the Depot Dentaire de Montreal, a co-operative firm doing in excess of \$100,000 business per year, with branches in Montreal and Quebec City.

The Casgrain and Charbonneau Company, a wealthy drug house, has also a dental division. In addition there are several other non-association houses of various sizes.

On the surface it would certainly appear that the Quebec dentists have adequate supply depots to take care of all their requirements.

It is the hope of both these men that at sometime in the future, they will be admitted into membership in the A.D.T.A. Just when this will come about, your guess is as good as mine.

Our policy has been and, so far as I know, will continue to be to sell to our present Canadian distributors without extending the field, unless some very definite reasons occur. There is no indication at present of any change in our policy.

The new company will be adequately financed as Rene Pettigrew is a comparatively wealthy man and he intends to finance the A. & P. Company, leaving the management largely to Armand Aubry, while he devotes himself to the establishment of commercial hotels in the Province of Quebec.

I will be very interested in having a list of the manufacturers who have indicated their willingness to supply their goods."

Ransom and Randolph replied on August 28, 1945, enclosing the list of manufacturers who accepted A. & P. Dental Supply as customers, and stating their own intentions as follows:

"The information you have so kindly supplied with reference to any possible recognition of the A. & P. Dental Supply, Inc. in Montreal is gratefully placed on record and we think the situation in Quebec hardly justifies any new distributing channels.

However, Don, it seems to us there is quite a definite possibility that Rene Pettigrew and Armand Aubry will provide some extremely effective competition to the established dental concerns in Montreal and Quebec City once they become established, due to their intimate familiarity with the dental business and the customers in that area. This is something we will have to watch rather carefully because any marked success of this concern would just naturally cost our group of manufacturers some business."

The list referred to in the above exchange of correspondence included the names of seven A.D.T.A. manufacturers, and these exceptions will be discussed below. The list was apparently made available to Denco and was the subject



of correspondence between Denco and Denco (Eastern), which was keeping closely in touch with the situation because of the competition which the opening of A. & P. Dental Supply gave rise to in Montreal.

Novocol, Canada, received a request from Aubry and Pettigrew on September 27, 1945, as follows:

"...We are to-day faced with a little problem, which I am going to find out if you can help us out. I have a very good customer of mine who would like me to get for him 4 bottles of 500 Monocaine tablets 1½ per cent or 1 per cent. I have tried to obtain these in town, and no one seems to carry them in stock. I have also tried the wholesale drug houses but had no luck. I was wondering if you could possibly help us out in some way. If it cannot be arranged that we should get our discount, I would appreciate if you would send them to us at the regular retail price, if such a thing could be arranged..."

(Exhibit 226)

In its reply of October 2, 1945, Novocol stated:

"We have your letter of September 29 and after full consideration of your request have decided that our representation in your city is at the present time full and complete. This matter was as you remember fully explained to you when in Toronto and we feel there is nothing we can do at this time. Nevertheless, we do thank you for the extension of your courtesies and with kindest regards remain."

(Exhibit 226)

Copies of the above exchange were sent by Novocol to Denco and Denco (Eastern) with the notation that it was self-explanatory.

Another exchange of correspondence on the subject of A. & P. Dental Supply took place between Paterson and S. S. White, Canada, in September, 1945, and was referred to by Mr. McKenna at the hearings as an illustration of the jobbing resolution. (Evidence, pp. 1592-1593). Paterson's letter dated September 19, 1945, stated:

"We have sold to A. & P. Dental Supply Inc. (Aubry & Pettigrew) a few items of our standard goods less 15 per cent discount, but before continuing we would like your opinion on the matter. Should we sell or refuse them?"

(Exhibit 315)

In reply to this letter on September 21, 1945, Mr. McKenna advised:

"While we have, and have had for some years, a courtesy discount of 15 per cent this has been largely confined to small transactions between Association houses. If we had intended or desired these people to have our products for resale, we could of course have given them recognition when they applied for it.

It might be considered that you, as a recognized dealer, desire these people to become our distributors and therefore your competitors. I do not think you are in any way justified in selling to them for resale any of our products or the products of any other Association member. I am quite sure that you would find that this would be the opinion of the policy, of any standard manufacturer now refusing to sell this company their products."

(Exhibit 316)

The products of Amalgamated Dental Company Limited of London, England, are sold only to dealer members of C.D.T.A. and until recently some of the smaller C.D.T.A. dealers were not recognized by this company. When the C.D.T.A. secretary requested Amalgamated to extend its recognition to these companies, however, it did so. When Amalgamated has received an order from an independent dealer it has sent copies of its refusal to all C.D.T.A. members who were handling its supplies, and it has written to the C.D.T.A. secretary at the same time informing him of its action. The correspondence makes clear that membership in C.D.T.A. is a requisite to obtaining supplies from this company.

A letter from Amalgamated to Ed. Green Dental Supplies Limited dated September 30, 1940, of which copies were sent to all Canadian dealers, stated:

"Replying to your 10th instant enquiry, we are unable to offer you Dental Burs. Apart from our existing obligations to various highly esteemed Dealer friends in your country we are in the position of needing all production for commitments on hand."

(Exhibit 112)

A. & P. Dental Supply applied to Amalgamated for their line in August 1945 and were refused ostensibly because commitments to older customers prevented their being supplied with goods in short supply. However, on the same date as the letter of refusal was sent, a further letter was addressed to the Secretary, C.D.T.A. and marked STRICTLY CONFIDENTIAL, which reads in part as follows:

"We have a letter dated July 30th from Messrs. Aubry & Pettigrew stating that they are opening up a new Dental Depot under the title:

A & P DENTAL SUPPLY Inc.,  
1235 McGill College Avenue,  
Montreal, 2, Canada.

They speak of considerable experience with our Denco friends and provide a Bank reference.

They do not say if they are members of your Association, or if they have applied or intend applying.

As maybe expected, the goods in which they are primarily interested are the very short supply lines of Burs and Forceps, and in view of our commitments to our very old and highly esteemed Dealer friends in Canada, writer quite realizes that it would be goodbye to their goodwill if we could not complete their long standing requirements and then offered supplies of the concerned lines to a new entry into the Dental distributing field.

As a matter of courtesy some acknowledgment has had to be made of their letter, and for your full information a copy of our reply is attached." (Exhibit 100)

During the war years burs made by Amalgamated were imported and distributed by the C.D.T.A., under arrangements with the Wartime Prices and Trade Board, to all dental dealers who had imported burs into Canada during a specified period. When the U.K. Government removed the controls which necessitated this system, Amalgamated reverted to its former method of supplying direct to its "trade friends" which automatically excluded the independent dealers and Paterson, which had not had trade recognition from Amalgamated prior to the war. Mr. Lawrie, Secretary of C.D.T.A., wrote to Amalgamated asking that Paterson be accorded the same treatment as other members of the association and Amalgamated complied. A quotation from the letter of Amalgamated to C.D.T.A. dated December 13, 1945, shows the relationship between Amalgamated and C.D.T.A.:

"In the third paragraph of your letter addressed for the attention of Mr. Walden and dated the 5th ultimo, you raise the question of the supply of Burs and other goods to Paterson & Paterson Inc., Montreal, and The British Columbia Dental Supply Co. Ltd., Vancouver.

The fact that this subject has been referred to by you in this particular manner leads us to think that the other members of the Canadian Dental Trade Association are in complete agreement with our supplies being made available to these two Depots.

About the same time as the receipt of the letter now being partially acknowledged we also received direct from Paterson & Paterson their letter of the 29th October, enclosing an order for Burs, Vulcanizers etc., and this we are putting in hand at once and hope to be able to dispatch in due course. Meanwhile we will write to Paterson & Paterson for Trade references, which is the usual procedure with new accounts. The British Columbia Dental Supply Company are already on our list of distributors in Canada."

#### 4. Efforts to Maintain Principle of Exclusive Dealing

The evidence of representatives of association firms and the C.D.T.A. secretary as to the inability of independent dealers to secure standard goods made by leading A.D.T.A. manufacturers was that this resulted from the independent selection by each individual manufacturer of the dealers he wished to have distributing his products. That the selection is confined to members of C.D.T.A. was to be explained, in their view, by the belief that the member houses are best equipped to provide the type of sales support which manufacturers desire.

The historic policy of A.D.T.A. as already outlined, and the standing resolution that jobbing be abandoned as an "unfair and uneconomic trade practice"



have served to perpetuate the principle of restrictive dealing. The documentary evidence shows that the members of C.D.T.A. have constantly endeavoured to prevent departures from the established policy of confining representation in Canada for goods made by A.D.T.A. manufacturers to members of the association. Representations are frequently made to manufacturers urging them to discontinue selling independent dealers or to refrain from supplying them. Many illustrations of this policy have been found in the files of the Toronto dealers. Some examples of C.D.T.A. efforts to influence the manufacturers, and their response thereto, are given in the following quotations from the correspondence:

Letter from National Refining to Bell Products Co., New York (non-member) dated October 1, 1940:

"... In the meantime will you kindly state what your Canadian policy will be. Are you going to sell to all Dealers in Canada, i.e., the regular members of the A.D.T.A., and as well the itinerant salesmen. This will have much to do with our decision because we cannot enter into competition with itinerant men who sell largely from their grips. It might be that if this material is satisfactory you would arrange to deal with us only. . . ."

Letter from National Refining to Dental Specialty Mfg. Company, Denver, Colorado, (member) dated November 18, 1940:

"... Is it possible that you are selling anything to Mr. Arthur Levitt of this City? He is a real outstanding, cut-rate Carpet Bagger. This is as far as I would care to describe him. He came in to our office to purchase some Bands and made the statement that he had ordered from your House but as yet they had not arrived.

We do not give him credit at all and when he buys, he buys at regular retail prices. . . ."

Reply to above, dated November 20, 1940:

"In reply to your favor of November 18th in regard to selling Mr. Arthur Levitt of your city, we would say that we sell no one in Canada but the members of the American Dental Trade Association. We did have an order from this Mr. Levitt for contra-angles and burs which we refused to sell. We did not even wait to look him up as we do not care to go outside of the Association where we are getting cooperation from our regular dealers."

Letter from Caulk, Canada, to Caulk, U.S. (member) dated September 29, 1941:

"Mr. Henden again brought up the question of our policy of distribution here. Mr. Bailey had warned me, that he would no doubt raise this question. It appears that Casgrain and Charbonneau, who operate a large medical supply business, are fairly large customers of another division of C.I.L.

In addition to the large medical supply business, they operate a small dental department and they have pressed for Lucitone recognition.

I took sometime to explain just how serious it would be if this company should be recognized. I pointed out to him the splendid support we were getting from the establishment dealers and I believe, I convinced him that our policy was right."

Letter from Midwest Dental Mfg. Company, Chicago (non-member) to Ash-Temple, dated March 14, 1942:

"When we first approached you on the idea of a private brand contra angle, we gave you our word that we would sell them only to Associated Dealers in Canada, and then only to firms who were in a position to order them in lots of at least 200, and we insist that up to this time we have absolutely abided by our word. We will be very frank and tell you that besides your firm, there are only two other Associated houses buying these contra angles; none of the others are able to order such quantities.

In light of the above statement, your remarks about an independent dealer selling our contra angles at \$7 each are very interesting, and for the protection of our mutual interests, we would consider it a very great favour if you would furnish us with more information—what is the brand stamped on the handpiece, and who is the dealer? You may rest assured that this information will be kept strictly confidential, and your name will in no way become involved."

(Exhibit 180)



Letter from Denco (Western) to Denco dated September 27, 1943:

"I have a letter from Fred Seip of Saskatoon in which he advises me that Homes Turner is selling a B80 brush for \$47 a gross. This brush he understands is identical to our Felton B80 and he is wondering if they are the same.

I am passing this information on to you in the event that the C.D.T.A. may have an agreement with Felton's by which Felton's will sell only through the Associated dealers in Canada."

Reply to above dated September 28, 1943:

"Replying to your letter of September 27, I am rather interested to hear that a person by the name of Homes Turner has been selling B80 brushes at \$47 per gross. These brushes could not be Felton's as the Felton Company limits the sale of their brushes to the members of the Canadian Dental Trade Association. There is a firm in Montreal by the name of the Acme Brush Company which has been selling brushes directly to carpet-baggers and to some laboratories and we presume these are the brushes which Turner is selling.

The reason I am particularly glad to hear this is that the Acme Brush Company has promised me that they would not sell to any other dental supply people than the members of the C.D.T.A. as the result of an order which we placed with them last year.

I am writing to the Acme Brush Company asking them if they have supplied these Brushes and if they have, we will, of course, discontinue supplying Acme brushes. Unfortunately, we were forced to sell Acme brushes when the Felton factory was taken up entirely with war work and their brushes were not available for civilian use."

Letter from Denco to Acme Brush Mfg. Company, Montreal (non-member) dated September 28, 1943:

"We have just received word that a person by the name of Holmes Turner in Saskatoon has been selling B80 brushes which are very similar to yours.

Will you please advise if you have been selling brushes to this person and also let us know if you intend to market your brushes solely through the members of the Canadian Dental Trade Association according to your agreement with us?"

Acme Brush Manufacturing Company replied on October 12, 1943:

"In reply to yours of Sept. 28 Mr. Holmes Turner is unknown to us, and up to the present time we have not sold any brushes to independent dealers, however, we have several orders on hand for quite some time which we delayed shipping, as we were hoping that the Canadian Dental Trade Association members would help us carry our stock by purchasing from us about 100 gross assorted dental brushes, which the writer suggested to you as well as other association members while in Toronto, but without any success whatsoever.

At the present time we find ourselves in a difficult financial position, due to having entirely too many dental brushes and dental brush materials on hand, and we do not see any way of carrying on unless we ship all the orders which we have on hand from independent dealers. However, we are delaying shipment of these orders for another week, so as to enable you to reconsider the offer of a 10 per cent discount, which the writer made to you when at your office."

Letter from Hygienic Dental Rubber Co., Akron, Ohio (member) to Ash-Temple dated October 19, 1943:

"We have an inquiry from Empire Dental Company, 1117 St. Catherine Street, West, Montreal, for our catalogue and wholesale price list.

Is this concern a member of the Dental Association? Your frank comments will be appreciated." (Exhibit 189)

Reply to above dated October 21, 1943:

"If I were you I would assume that you had sufficient representation in the city of Montreal without extending it any further by recognizing the Empire Dental Company.

Montreal is probably the worst city in Canada for 'one horse' dental dealers, corresponding I'd say to New York or Chicago. The mentioned company is definitely not a member of the Association.

I think, too, you would be wise not to upset our Montreal staff who at present are averaging somewhere over two hundred pounds a month of your rubber, as it is by far the best territory for rubber that we have, and I would hate to see anything happen to it."

(Exhibit 189)

Letter from Ash-Temple to Torit Mfg. Company, St. Paul, Minnesota (non-member), dated December 27, 1943:

"Speaking as a member of the Ash-Temple Company we believe you would be unwise in recognizing the Mid-West Dental Supply Company of Saskatoon. They are such a small organization that we are afraid that the antagonism aroused in the mind of our branch which covers that territory as well as that of another member of the Trade Association, who have a branch in the city itself would more than outdo any increase sales you might expect.

Speaking generally for Canada we think you would be wise to recognize only members of the Canadian Dental Trade Association as we have found that without exception the independent houses cut prices to such an extent that we other dealers lose interest in the products handled by them. Another major factor is that the Trade Association members cover the whole of the Dominion from one coast to the other. The Ash-Temple Company for instance had, in prewar times 3,500 open accounts out of the total dental population of 4,000. We think you can understand our reasons for sincerely recommending that you do not recognize the Company under discussion." (Exhibit 191)

Letter from Denco to The J. Bird Moyer Co. Inc., Philadelphia, Penn., (member) dated November 3, 1944:

"To change the subject, I attended the Montreal Fall Clinic which was held October 27 to 29, and noticed that the Depot Dentaire de Montreal and also Casgrain & Charbonneau were handling Bird Moyer products. I do not want to lodge a complaint in this connection, but at the same time I am quite sure that you would not like to see your merchandise sold indiscriminately at varied prices. Neither of the above companies are members of the Canadian Dental Trade Association and consequently have not access to the supplies of the better-known manufacturers of the American Dental Trade Association.

From time to time there has been some criticism that Bird Moyer products have been handled through outside dealers. In fact, at the recent meeting of the C.D.T.A. there was slight criticism to this effect.

Would you be willing to consider the distribution of your products through the members of the Canadian Dental Trade Association as follows—

- The Ash-Temple Company Limited
- The British Columbia Dental Supply Co. Ltd.
- The Dental Company of Canada Limited
- The Dominion Dental Company Limited
- Maritime Dental Supply Company Limited
- National Refining Company Limited
- Paterson & Paterson Incorporated.

If you follow this policy, I believe that Bird Moyer products would receive more support. In fact, you would be in a position to advise them that the support of your products was expected. I believe by carrying out this policy that the tendency would be that your business in Canada would increase rather than suffer a loss through the sale to companies other than members of the C.D.T.A."

On the occasion of the opening of A. & P. Dental Supply, Denco wrote a series of letters to manufacturers, requesting them not to sell to the new company and typical of these letters is the following, written to Amalgamated Dental on March 30, 1946:

"We have heard a rumour to the effect that you have been supplying merchandise to the A. & P. Dental Supply Inc. of Montreal. We believe your policy for the distribution of your products in Canada was that you would confine your sales to the members of the Canadian Dental Trade Association.

Will you please let us know if you have supplied A. & P. Dental and if so, advise whether you have changed your policy of distribution of Adco products in Canada?

Although we do not believe the information we have received comes from a reliable source, nevertheless, we would like to receive word from you in this connection." (Exhibit 145)

In a reply to Denco on April 30, 1946, Amalgamated Dental referred to the fact that C.D.T.A. had been sent a copy of a letter addressed to A. & P. on August 10, 1945, in which Amalgamated had indicated inability to supply the new firm, and also stated:

"... we take the opportunity of informing you that we have looked into the subject matter of your letter and cannot trace that any goods have been sent to the firm named in your letter. It would appear that the information which has been conveyed to you in this connection must have come from a unreliable source."

It is evident that if independent dealers are unable to buy directly from manufacturers, or to buy from them on terms as favourable as those secured by association houses, they would be at a serious disadvantage in competing with C.D.T.A. members in the sale of such products. The independents can secure some of these goods, at higher prices, from secondary sources; otherwise, they are unable to purchase at all. This, of course, is one of the objectives of the jobbing resolution, to control the competition of the independents. A principle so firmly established in association practice would not likely be the subject of discussion except in special circumstances and matters relating to the association would not usually be the subject of written communications among dealers in the same city. The situation differs from that of the manufacturers already referred to as they were generally located in the United States.

The vigilance exercised by the Association members in keeping each other in line with the agreed policy is illustrated by the following extract from a letter written on May 7, 1937, by Mr. R. O. Bailey, then Managing Director of Caulk of Canada Limited, to Mr. W. V. Grier, of the L. D. Caulk Company of Milford, U.S.A.:

"To keep you posted regarding Mr. Temple's complaint of price-cutting on Alloy:

I had a long talk with Mr. Wm. McTavish which culminated in his promise not to supply T.C. to jobbers. He admitted he had been doing it, and said the other dealers would do it if he did not. I told him I had the assurance of the other dealers that they would not.

This promise I communicated to Mr. Temple. This all took place a couple of weeks ago.

Yesterday, Ed. Green sent to the A. T. Company to buy Alloy. He was refused. He sent to the Dominion Dental and bought a 5-oz. bottle at list price. He sent to the Dental Company and bought 5 one-ounce bottles at list. This morning, he called up Mr. Temple and argued for fifteen minutes about being turned down the day before.

Mr. Temple told me about this to-day and predicted that Mr. McTavish will be telling me in a few days that Green can get all the T.C. he wants from the other dealers. Mr. Temple also called up the Dominion and Mr. Henry Thompson about their selling the Alloy to Green. So, with all this vigilance going on, we ought to keep things pretty clean.

Mr. Lawrie of the Dominion called me to explain, and said that it was the first time they had sold Green in years, and they would not repeat."

Under the interpretation given to "jobbing" by the Executive Board of the A.D.T.A., no dealer may sell a manufacturer's product at a trade discount to a firm not enjoying trade recognition from the manufacturer. The construction placed upon this rule by two leading individuals in the trade is shown by an exchange of letters between Mr. James Johnston and Mr. L. E. Thompson, both of Denco, in September, 1945, dealing with the question of sales to A. & P. Dental Supply. Mr. Johnston had written that he understood the rules of C.D.T.A. prevented the sale of association goods to a non-association house and that he would like to have this confirmed by an authoritative source. Mr. Thompson replied:

"Although the ruling of the C.D.T.A. with respect to dealing with carpet-baggers has not been elucidated for several years, we understand that it definitely is that no members of the Association should sell to carpet-baggers except at the regular list prices. You will probably recall a person by the name of Levitt who carries on a carpet-bag business here. He has tried his utmost even to the point of appealing to Ottawa to get us to supply him with merchandise. We have been informed that we are perfectly within our rights to refuse to sell him. Consequently, if he should come into our office to buy any merchandise, he is unsuccessful. In fact, he has been told to stay out of our office entirely.

It is strange that you should mention about confirmation of the C.D.T.A. rule concerning dealing with outside houses because this same discussion took place at our last meeting of the Price Book Committee when it was decided that we should at the next Semi-Annual Meeting in Montreal make a resolution reiterating the understanding which deals with the supplying to outside concerns at wholesale prices and prices other than the regular list prices."

(Exhibit 248)



In answer to this Mr. Johnston wrote:

"You refer to a ruling of the C.D.T.A. to the effect no member should sell a carpet-bagger, and for me this description includes the outside houses, goods except at the 'regular list price' or 'at prices other than the regular list'." (Exhibit 247)

### 5. Exceptions to Rule of Restrictive Dealing

It has been noted that association witnesses throughout the hearing stressed the fact that there were examples of association members selling to independents. This is not characteristic of the operations of the association as a whole and the documentary evidence shows that the leading manufacturers of A.D.T.A. pursue the policy of restrictive dealing consistently. Where sales have been made to independents it has usually been because the manufacturer concerned has felt that C.D.T.A. members have not given his products the support to which he thinks they are entitled.

The following is an excerpt from a letter dated October 31, 1941, from Dr. Henry A. Thompson, President of Denco, to Mr. Frank Parry of Denco (Alberta):

"You mention in your letter of October 13 that the Canadian Dental Supply Company are selling Lee Smith's goods in Vancouver, and you imply that this is against the regulations of the A.D.T.A. There is no regulation in the by-laws or any other rules and regulations of the Association to restrict a manufacturer, or a dealer for that matter, from selling their goods where they can. It has been the practice that where a manufacturer, who was a member of the A.D.T.A., is given fair representation from the local A.D.T.A. dealers, that he should not sell to outside houses, but I don't think you or anybody else would venture to state that Lee Smith's products have had the support of the dental dealers in British Columbia, and probably we should not object to their being sold to the Canadian Dental Supply Company."

While the formal constitution of A.D.T.A. specifically records the right of members to choose their own customers, the rule of restrictive dealing still holds in spite of minor exceptions. In some instances where such sales have been made it is clear from the documentary evidence that they have been in the nature of a consideration to the independent concerned for his supplying products under his control to the seller. Such an exception is referred to in the following quotation from a letter written by Denco (Eastern) to Denco on September 5, 1945. Mr. Johnston, Chairman of the Board of Denco and President and active manager of Denco (Eastern), stated in this letter that he adhered to the rule forbidding sales of association goods to non-association houses and then continued:

"...the exceptions being that we have sold Casgrain and Charbonneau certain Denco items...and on rare occasions certain regular association items.

Our reason for doing above was that for quite a considerable time we purchased for your account from C. & C. Frenches (*sic*) Posteriors and as a sort of favour we reciprocated by selling them odd items as above mentioned. We also buy Drugs and other sundries for customers orders from them. We have also on rare occasions sold Canada Dental an odd item but our attitude has been and still is to follow the Association rule and sell no outside concern such items."

Some of the association dealers do sell to certain independents, who are generally not in direct competition with them, the goods which they produce themselves or which they obtain from non-association sources on an agency basis, as well as certain association products which are subject to competition from non-association sources.

One A.D.T.A. manufacturer who sells to non-association dealers is The Weber Dental Manufacturing Company of Canton, Ohio, makers of dental equipment. National Refining through its president made strong efforts, without success, to induce this company to confine its sales to C.D.T.A. members. Its

reasons for refusing are set forth in a letter to National Refining dated December 9, 1940:

"I fully appreciate the fact that your recommendation insofar as the conduct of the Weber Company is concerned in Canada, is prompted by your interest in our affairs. On the other hand there are certain sections of Canada, in our opinion, that may be developed in one way or another by our Company that should in no way affect the interests of other parts of the country. I feel this is particularly true of the situation that pertains in Montreal.

After all, our friends the Temple Company have always pursued a perfectly selfish interest in the conduct of their affairs, and so has the Denco Company. They have never thought at any time of the interests of such manufacturers as the Weber Company when it became necessary for them to make some move that would benefit either of the Companies mentioned and they made it without consultation with us.

I cannot agree with the sentiment expressed in your letter of the 6th that the business in Montreal belongs to the White Company and the Ritter Company. I do not know what precedent has ever been set up to establish such ownership of a commercial market that is open to any progressive concern that can secure a reasonable amount of business in that particular market.

I do not know what our policy is to be with respect to the Montreal situation but I certainly cannot accept of any such arbitrary sentiment as expressed in a recent letter from Mr. Simard of the Paterson & Paterson Company which stated that they would place an X-Ray order with us provided we agreed to sell no one else in Montreal, and, further provided we gave them a post dating of January on the X-Ray. In consideration of the way they have handled our affairs in the past, we, of course, could not accept of any such agreement or arrangement.

As I explained to you in a previous letter, goods shipped to them on consignment in bond for exhibit purposes have been returned to us as they neither made the sale to justify the shipment nor were they willing to keep the Machine on display after it was received there and shipped to them for their convenience. There (sic) performance with us to date does not lead us to believe that they are financially sound to the extent that we could extend to them any material credit. Consequently, any move that we make in Montreal will be in the interest of the Weber Company under conditions that we feel sure will in no way disturb your market in Ontario. Please be assured of that."

In a letter quoted in Part 3 of this Section it was indicated that A. & P. Dental Supply were able to obtain goods from seven A.D.T.A. manufacturers according to a list which they prepared and sent to Ransom & Randolph Company and which was sent by the latter to the C.D.T.A. secretary. The seven manufacturers, described as "the usual people who sell practically everybody", were:

The W. V-B Ames Company, Fremont, Ohio  
 Atlantic Rubber Mfg. Corporation, New York City  
 Chayes Dental Instrument Corp., New York City  
 J. F. Jelenko Co. Inc., New York City  
 Mynol Chemical Company Inc., Philadelphia  
 The Pelton & Crane Company, Detroit  
 Lee S. Smith & Son Mfg. Co., Pittsburgh

It is possible to check the importance of these companies in the dental goods field by reference to the C.D.T.A. price book, which will be described later. This book lists all the most important items sold by the associated dealers. Only one product of the Ames Company is listed in the book and this at a higher price than competitive products. The same thing is true of Atlantic's rubber. Only odd items of the other companies, with the exception of Pelton & Crane, are listed, and they are all in the field of minor specialties. Pelton & Crane, makers of sterilizers, lights and other equipment, is given a special page in the price book. Its products are competitive with those of the Wilmot Castle Company, a non-association manufacturer which is given considerable support by C.D.T.A. members.

It is questionable, however, if Pelton & Crane could be continued in the A. & P. list of suppliers in view of correspondence exchanged between National Refining and Pelton & Crane about two months after the list was prepared. Pelton & Crane wrote on November 2, 1945:

"I need some confidential information which I am sure that you will be in a position and glad to give.

Some time ago we were called on by A. Aubry and R. Pettigrew who have established themselves in the name of 'A & P Dental Supply, Inc.', 1235 McGill College Ave., Montreal.

We have let them have a few parts for repairs but I have not encouraged them by saying that we would supply them with any complete units of our products. I told them that we were so far behind in deliveries that we could not entertain any new accounts.

Are they going to be able to secure lines of the various manufacturers, such as ours? A frank expression from you in your reply will be greatly appreciated." (Exhibit 127)

Mr. McTavish, President of National Refining, answered on November 5, 1945, as follows:

"I heard, when in Montreal, recently, that you had given them an Agency and was very sorry to learn about this because, I believe your interests are best served, at least for the present time, with the present set-up of dealers. If you give your Agency to A. & P. I am sure there will be considerable distaste on the part of the Dental Company of Canada and the Asa-Temple Company, as well as, Paterson & Paterson. Whether or not they are giving you your proper share of business, is another question, and I am sure you would be tempted to give the Agency to someone who would really push your Sterilizers. However, I think your answer at this time should be that you already have sufficient distributing Agents in Canada, and that you do not intend to open up any more at this time.

They have been hunting all over the United States and Canada for Agencies, but have secured none, except those of some outside Houses. The only Company, I believe, that gave them some equipment is the Buffalo Dental Mfg. Company, who have had such rotten representation in Canada that they finally decided to accept an outside House. However, Buffalo Dental Company do not count as their equipment is too expensive in this country, and all of the Dealers here, have tried to sell it, but without success, because duplicate products are made in Canada. No other standard House has recognized them as their answer is that they have sufficient representation in Canada."

(Exhibit 128)

The manufacturers of precious metals and anaesthetics also stated in evidence that they sell to non-members of C.D.T.A. Sales of precious metals, however, are made direct to users in areas where competition from non-association sources makes this necessary, and to independents because of the competition of non-association manufacturers. Anaesthetic manufacturers sell also to surgical supply houses because there is a demand for their local anaesthetics for medical purposes. The policies of the manufacturers of these products will be outlined in greater detail in Section VII.

Finally, evidence was given to the effect that some A.D.T.A. and C.D.T.A. manufacturers have refused to sell to certain association members. This has little significance as this sort of transaction does not come within the ban of the jobbing resolution. There is evidence, however, that where such a policy has been pursued it has arisen from charges of price-cutting against the dealer from whom trade recognition, with respect to these particular products, was withheld.



## V. CONTROL OVER PRICES AND TERMS

### 1. The Price Book

A principal feature of the C.D.T.A. programme is the preparation and publication of the Universal Price Book which puts in the hands of all dealer members schedules of uniform prices and terms of sale for use by them in the sale of dental supplies of all kinds to dentists and other purchasers. In its present form the price book is a series of loose-leaf pages which list virtually all the products handled by the dealers. There are eight sections of the book, which is published in both eastern and western editions. The equipment, teeth and precious metals sections list (on separate pages) the prices to be charged for the products of each manufacturer. Other sections list the prices for refinishing used equipment, maximum allowances for used equipment, and minimum selling prices for used equipment. There is an alphabetical list of sundry merchandise which is arranged by classes of products, showing similar products of different manufacturers and their prices. Finally there is a section devoted to terms of sale to various classes of customers.

All the products listed in the price book are given brand names and are claimed to be subject to price control by the manufacturers or the firm possessing the brand. Most of the items listed are produced by A.D.T.A. and C.D.T.A. manufacturers, and these represent the bulk of the sales volume. A few are made by independent dental manufacturers and many are specialties of non-member manufacturers who are not engaged principally in the dental goods industry.

The Universal Price Book, used by all members of C.D.T.A., was first adopted by the association about 1922 or 1923 and has been maintained continuously since that time. Mr. D. L. Lawrie, who was price book secretary at the time and for a great many years afterwards, said that the original Universal Price Book was based on a compilation of prices which he had made for the use of Ash-Temple, with which firm he was then associated. (Evidence, pp. 395-396). It is significant that the adoption of the Universal Price Book by members of C.D.T.A. seems to have been contemporaneous with the introduction in 1922 of the loose-leaf catalogue of dental products by A.D.T.A. in the United States. As in Canada, pages are distributed to members by the general office of the association.

The prices and terms listed in the Universal Price Book are those normally charged by all the dealer members when selling to users. The book is used by salesmen and invoice and counter clerks throughout the trade and any variations made in these prices and terms are made only on the authority of the executive members of the dealer companies. The preparation and use of the Universal Price Book by members of the association must be regarded as essential features of an agreement to fix common prices and to eliminate price competition in the trade in dental supplies. A minute of the Annual General Meeting of C.D.T.A. held in Toronto on February 13 and 14, 1934, gives formal expression to this agreement:

"It was moved by Mr. Alexander, seconded by Mr. Brent, that schedules of prices and quantities as shown in Canadian Universal Price Book be adhered to. Carried."  
(Exhibit 20)

The oral evidence of Mr. Lawrie on this resolution was that it had not been revoked, while Mr. Alexander of Dominion Dental admitted that it was the agreed-upon policy of C.D.T.A. (Evidence p. 1437). Mr. Harris of Ash-Temple

stated that this was the policy of his company but that the policy was followed regardless of the resolution. He agreed that it was also the policy of C.D.T.A. and said:

"Naturally to carry out that policy ourselves we cannot ignore our opposition entirely; and if we can influence them to maintain what we think is the right policy, it helps us to do it." (Evidence, p. 944)

In view of the predominant position which Ash-Temple has held in this field for so long, and the leading role played by the late president of Ash-Temple, Mr. H. P. Temple, in the organization of the retail trade, this statement is of considerable significance.

## 2. Preparation of The Price Book

The leading committees of C.D.T.A. are charged with the task of preparing prices and terms, which are then incorporated in the Universal Price Book. On occasion these decisions have been submitted to the association for approval and at other times have been decided finally by the appropriate committee. A brief description of the history and functions of these committees follows.

*Price Book Committee.* This committee has operated continuously throughout the period 1930 to 1947, and since 1932 has been made up of representatives of the four Toronto dealers. It has not kept minutes of its proceedings, but the agenda of several of its meetings towards the end of the period clearly indicate its functions. Its basic task is the detailed preparation of the prices of products imported from the United States, the compilation of the material received from other committees and the printing and distribution of the Universal Price Book. When changes in prices are made between revisions of the book, loose-leaf corrections or letters are sent by the committee or the Price Book Secretary to member firms. From 1930 to 1941 the Price Book Secretary was Mr. D. L. Lawrie, and since 1941 Mr. J. K. Laird, purchasing agent of Ash-Temple, has served in that capacity. As recently as 1945 this committee was meeting every two weeks.

*The Welfare Committee.* This committee, composed of the active heads of the four Toronto dealer houses, operated from 1930 to 1938, when its name was changed to Toronto Dental Dealers. The committee was reappointed under this name for 1939 and 1940, and in 1942 it was agreed not to reconstitute the committee but to have the meetings in Toronto held as C.D.T.A. meetings. This decision was carried out but minutes of such meetings were not kept. The Welfare Committee at one stage kept detailed memoranda of its decisions and those applying to the period February 19, 1934, to September 6, 1934, are included in the documentary evidence. At this time the Welfare Committee developed the terms of sale to different classes of customers which were later adopted at general meetings, adopted a price formula and made many price decisions relating to specific products. These memoranda establish this committee as the most important factor in the development of the price book system of C.D.T.A. In recent years the committee has not met frequently, much of the work formerly done by it having passed to the Price Book Committee which carried it on along the lines developed by the Welfare Committee.

*Appraisal Committee.* This committee has operated continuously throughout the period, its membership being representatives from the four Toronto houses. For many years Mr. P. N. Alexander of Dominion Dental has been its spokesman. It produces the sections establishing appraisal values for used equipment and the refinishing prices.

*Welfare Committee for Quebec and East.* A committee under the above name, later called the Montreal Dealers, has existed during most of the period reviewed. It has met from time to time to deal with the same sort of business as the Welfare Committee in Toronto. Its members included one representative from each of the Montreal dealers. It appears to have taken over and adopted the policies, prices and terms adopted by the Toronto committee and is regarded as of secondary importance in relation to the price book system as a whole, although references have been found to a number of meetings, especially to discuss tenders to the Montreal universities.

### 3. Price Fixing

The members of the trade who gave evidence contended that in agreeing to maintain prices they were merely agreeing to give effect to the retail prices established by the various manufacturers for the sale of their products in Canada. This was well expressed by Mr. P. N. Alexander of Dominion Dental in the following exchange:

"Q. This resolution was passed and accepted by the members of the C.D.T.A. Is it fair to say that this was the policy which they agreed upon with respect to the Universal Price Book?

A. Yes, I think it is fair to say that the general policy was that the prices that were established by a manufacturer should be adhered to because in order to exist and continue to make a reasonable margin of profit we had to have the amount of discount that the manufacturer gave us." (Evidence, p. 1437)

This view was ably presented during his argument by Mr. J. W. Pickup, K.C., counsel for most of the association members. The substance of his argument on this point was that the Universal Price Book was in reality nothing more than a catalogue which consolidated the resale prices suggested by the manufacturers into one volume for the convenience of those required to use prices in the course of their work. The resolutions were claimed on this basis to be merely an expression of view of the members as to the proper course which should be followed by distributors when faced with suggested resale prices by manufacturers. When it is recalled that the Universal Price Book was worked out on the initiative of the C.D.T.A. and maintained in use as a matter of agreed policy among its members and that, further, the determination of prices of dental supplies in Canada is primarily the work of the association, it would be expected that an examination of the records relating to the activities of the association would reveal the actual nature of the arrangements affecting prices. The documentary evidence on this point, however, shows that the prices in the Price Book have largely been determined by the Canadian dealers, frequently without discussion with the American manufacturers. Reference to some of this evidence is made in the next section of this report.

In discussing the way in which prices are determined, four main classes of goods listed in the Price Book are distinguishable: branded articles imported from the United States, Ash products imported from Amalgamated Dental of the United Kingdom, private brand articles of the four Toronto dealers, and products of the C.D.T.A. manufacturers. Consideration must also be given to the procedure for establishing Western prices, terms, appraisal values and refinishing prices.



## VI. METHODS OF PRICE FIXING

### 1. Goods Imported From United States

A. The Price Book Formula: Goods imported from the United States have been subject to varying rates of customs duty, sales tax and transportation costs and, on occasion, to adverse exchange. It must therefore be expected that Canadian retail prices will exceed American retail prices by at least the amount of such additional outlays over first cost. The C.D.T.A. have agreed upon a common basis for computation of Canadian retail prices from American retail prices by the adoption of a price book formula. This formula reflects any changes in the duty or other costs in such a manner as to reimburse the dealer for all his outlays and in addition to secure for him an arbitrary percentage profit on these duties, adverse exchange, sales tax and transportation. This rate of mark-up is geared by the formula to the mark-up on wholesale cost which the American retail list price allows to the American dealer, and is exactly the same as the percentage margin which the Canadian dealer obtains on his wholesale cost. Under the formula the mark-up on these additional outlays in respect of most dental goods is  $66\frac{2}{3}$  per cent.

In order that there should be no possibility of variation in the retail prices of C.D.T.A. members, the price calculations are made by the Price Book Secretary or Price Book Committee and each member is furnished through the Universal Price Book or by notice, with the common prices thus determined. Although the concept of the formula method of fixing prices is said to have been developed by one Canadian dental company, it was given general application as a result of action taken by C.D.T.A. Mr. D. L. Lawrie had used the formula on behalf of the Ash-Temple Company but it was taken over by the C.D.T.A. when the Universal Price Book was established. He explained that approval of the formula method was secured from American manufacturers. Asked if the inquiries addressed to United States manufacturers were made by him as a representative of Ash-Temple, he replied:

"No. When we decided to make it a universal [price] book, they went as trade association.

Q. And at that time was the matter discussed with the other dealers in the trade?

A. Oh, yes.

Q. It would result then in common prices in Canada for products imported from the United States.

A. Yes, it would."

(Evidence, p. 398)

Examples of the formula, applicable at different periods, are to be found in Appendix II.

During the period under review the component elements of the formula have been subject to wide fluctuations, and all such changes are incorporated in the agreed prices which are recorded in the price book. Thus in the 1930 version, duty and transportation were the only items involved, whereas in early 1946 there were additional elements of an adverse exchange of 10·5 per cent and a sales tax of 8 per cent. Canadian dentists should expect to pay the full amount of such additions to cost; but in an open market the extent of further additions in the nature of margins over such charges would be limited by competition. Under the formula system all dealers agree to include much more than these actual outlays.

C.D.T.A. dealers insist that what they are doing is merely maintaining the suggested resale prices of the United States manufacturers. They justify use of the formula on the ground that it gives them the same percentage margins as the American manufacturers allow to American dealers. In dollars and cents the Canadian margin is considerably higher than the American margin because it includes the same percentage markup on duty, taxes, etc., as on the invoice cost of the goods. Even if in fact members of the association were merely agreeing to maintain resale prices suggested by American manufacturers, such an agreement would result in preventing competition or lessening it to a very great degree. As is shown, however, the agreement goes much further.

The structure of prices of dental supplies in the United States and the discounts which are established for dealers in that country cannot be considered apart from the activities of the A.D.T.A., through the Discount Committee and in other ways, to maintain and enlarge the gross profit of dealer members. Whatever arbitrary and non-competitive elements are present in the American resale prices are consequently perpetuated and greatly magnified in the prices established by the C.D.T.A. and charged by member firms, as their employees follow the prices listed in the Universal Price Book for imported goods.

The formula used by C.D.T.A. immediately prior to the equalization of the United States-Canadian exchange rate in May, 1946, is stated to have been worked out to provide for duty, adverse exchange, sales tax and transportation. The percentages by which American prices were to be increased ranged between 38 per cent (for goods subject to customs duty of 10 per cent) and 68 per cent (for goods with a duty rate of 35 per cent). The following example, using a rate of duty of 25 per cent, which is a typical rate for dental goods, illustrates the method stated to be followed in calculating the formula:

	Per Cent	Cumulative Costs Per Cent
Cost in U.S. to Canadian dealers .....	100	100
Adverse exchange.....	10·5	110·5
Duty (25 per cent of 110·5).....	27·63	138·13
Sales Tax (8 per cent of 138·13).....	11·05	149·18
Incoming transportation (3 per cent of 110·5).....	3·32	152·49
Delivery charge (2 per cent of 152·49).....	3·05	155·54
Canadian cost as percentage of cost in U.S.....	155·54	155·54
Formula increase over cost in U.S. ....	56%	56%

In the above example, the cost to the Canadian dealer arising from adverse exchange, duty and sales tax would increase his actual outlays by 49 per cent; in addition, there would be the actual transportation and delivery costs, which are given arbitrary percentages in the C.D.T.A. formula. If these arbitrary freight allowances coincide with actual charges, the net total cost to the Canadian dealer would be 56 per cent higher than his American counterpart.

This percentage increase in *cost* is then adopted under the formula system, using the American resale *price* as a basis, to obtain the Canadian price. This means that the percentage margin between the total Canadian cost as shown in the above table and the Canadian resale price is exactly the same as the percentage margin between the much lower American cost and price. The effect of this appears very strikingly when the formula in use immediately prior to May, 1946, is applied to a bill of goods imported from the United States having an invoice price of \$100. It is assumed that the invoice price results from the deduction of the customary dealer discount of 40 per cent from American retail list prices, and that the goods are subject to a 25 per cent customs duty on entry into

Canada. The following example compares Canadian and American costs and prices on this hypothetical purchase:

—	Cost to Dealer	Retail Price	Spread	Dealers' Margin	
				On Cost	On Selling
				%	%
U.S. dealer.....	\$100.00	\$166.67	\$ 66.67	66⅔	40
C.D.T.A. dealer.....	156.00	260.00	104.00	66⅔	40

It is seen that the Canadian dealer obtains the same percentage mark-up on his outlay as does the U.S. dealer, 66⅔ per cent on cost, but his dollar and cent margin per unit of sale is substantially higher, \$104 against \$66.67. Indeed in this instance the dealer's margin of \$104 as agreed upon by C.D.T.A. members, apart from the actual costs which are beyond the control of the importers, approximates the manufacturer's selling price in the United States. It is only slightly less when there is no element of adverse exchange to calculate, as has been the case since May, 1946. Thus the range, in dollars and cents, within which competition might operate is as great at the retail level in Canada as at the manufacturing level in the United States.

When it is necessary to take account of changes in exchange, rates of duty or taxes, the formula is altered by the C.D.T.A. In 1930 the formula, in the example already given, provided for an addition of 30 per cent to cover such items; in 1936 it was 42 per cent; in 1944, 63 per cent; in 1946, 56 per cent. The following table illustrates the effect of such alterations on the margins of C.D.T.A. dealers. They reflect changes in the outlay for exchange, taxes and so forth, but such changes have no directly equivalent effect upon the dealer's cost of doing business. The figures are based on the purchase and sale of merchandise costing \$100 in the United States, imported at a Canadian customs rate of 25 per cent, and resold at a price which allows a margin of 40 per cent on selling price. At all times the American dealer's price would be \$166.67 and his margin \$66.67.

Period	Formula Percentage	Invoice Cost of Goods	Provision for Duty, Taxes, etc.	Dealers' Margin			Canadian Retail Price
				66⅔% on Invoice Cost	66⅔% on Duty, Taxes, etc.	Total	
	%						
1930.....	30	\$100.00	\$30.00	\$66.67	\$20.00	\$ 86.67	\$216.67
1936.....	42	100.00	42.00	66.67	28.00	94.67	236.67
1944.....	63	100.00	63.00	66.67	42.00	108.67	271.67
1946.....	56	100.00	56.00	66.67	37.33	104.00	260.00

This breakdown of the retail price shows the serious effect of the agreement on price and the application of a formula under which C.D.T.A. dealers undertake to eliminate price competition. The margins which Canadian dental dealers actually require to operate their individual businesses depend, of course, on the efficiency with which their operations are conducted. A highly efficient dealer needs a smaller margin than a less efficient one. Under the formula system, however, a dealer's selling prices are determined, not by his own cost of doing business, but by agreement on a formula which brings all dealers to a common price on each item they sell. Competition does not regulate prices; it is displaced by arbitrary margins maintained by agreement among sellers.

The use of the price book formula in arriving at Canadian prices is described in a letter from Denco to Gomco Surgical Mfg. Corporation of Buffalo, N.Y., dated September 12, 1944:



"... The Canadian Dental Trade Association of which we are members has a definite sales policy in the pricing of merchandise received from the U.S.A. This policy is as follows:

1. List prices are arrived at by adding a percentage to U.S.A. list prices to cover importation costs. This percentage allows the Canadian Dealer exactly the same margin of profit as the Dealer in the U.S.A., which in your case is 40 per cent.

2. Our terms for payment are 2 per cent 30 days. Otherwise none.

We would not like to deviate from this policy because these terms apply to all the merchandise we sell, and hope that you will find this agreeable, and there will be no deviation from this policy as far as our Company is concerned." (Exhibit 140)

Mr. L. E. Thompson when examined upon this exhibit agreed that Canadian prices are arrived at in this manner but reiterated his conviction that this did not constitute price fixing. He felt that instead of writing "list prices are arrived at" he should have written "your list prices are maintained, plus the importation costs". (Evidence, pp. 917-918).

In spite of documentary evidence, some of which will now be referred to, which indicates that resale prices were established in Canada by the action of the Association, similar testimony was given by representatives of other dealer members. The following extract from a letter written on February 28, 1940, from National Refining to Mr. H. P. Temple of Ash-Temple is of interest in this connection:

"I am not sure that it would be wise to make any change at this time in our Secretary because Mr. Lawrie is that and his duties embody the making up and keeping in good shape the Price Book. There is considerable history back of this and one in particular I would like to draw attention to. You know that it is fixed policy of the Canadian Dental Trade Association that we do not make prices in Canada but rather that the wholesaler that sells to us fixes his Canadian prices and then allows us a discount from that price. If this rule were not followed we might be classed as a group that were fixing prices and this we must avoid."

The formula method of pricing is followed by C.D.T.A. to the fullest possible extent and, in many cases, automatically and without reference to the manufacturer whose proprietary articles are being sold. In other cases it applies in the establishment of prices by negotiation between the C.D.T.A. or its members and the manufacturers.

**B. AUTOMATIC APPLICATION OF THE FORMULA.** Numerous examples of the automatic application of the price formula have been found in the documentary evidence, which establishes that this system of pricing has been applied to the goods of at least the following companies:

Coe Laboratories Incorporated, Chicago  
The William Getz Company  
Hammond Dental, Santa Monica  
Hanau Engineering Company  
H. D. Justi & Son Incorporated, Philadelphia  
McCormick Rubber Company  
Meisinger Sales Company, New York  
Mynol Chemical Company, Philadelphia  
Pelton & Crane Company  
Ransom & Randolph Company, Toledo  
Star Dental Manufacturing Company, Philadelphia  
Wilmot Castle Company

A few excerpts from the evidence which illustrate this pricing system are cited below:

The Mynol Chemical Company wrote to Ash-Temple on February 19, 1943, in part as follows:

"We understand the Canadian dealers have established a retail price on Mynol products and which is in excess of our retail price list, for the reason of duty, etc.

We are enclosing a retail price list of the entire line and would ask if you would kindly mark the retail prices which are set up on each item." (Exhibit 186)

Paterson & Paterson wrote to Mr. J. K. Laird, the price book secretary, asking for the correct retail price of the Hanau Acid Treating Unit. His reply of November 24, 1942, was as follows:

"Since the Hanau Acid Treating Unit has an established price in the United States of \$22.50 and also as it is electrical calling for a duty of 25 per cent, to arrive at the correct Canadian price we use the scale established by the Trade Association of 63 per cent. This means \$36.70." (Exhibit 183)

Mr. Laird, when examined on this exhibit, agreed that this was the method used for arriving at Canadian prices for Hanau's products. (Evidence, p. 1072).

A member of the Price Book Committee, Mr. R. J. Dunlop, wrote to Mr. Lawrie, the price book secretary, on September 9, 1941:

"We are enclosing, herewith, a suggested list of retail prices regarding McCormick Rubber Company products. The regular Rubbers are figured in the usual way in quantities of 1 lb., 5 lbs., and Lab., rates . . .

Trusting that you will find these figures correct."

(Exhibit 117)

In evidence, Mr. W. McTavish, president of National Refining, said about the subject matter of this exhibit:

"I think McCormick are a type of company that, as long as they sold to a retail company, they do not care what they sell at." (Evidence, p. 765)

**C. NEGOTIATED PRICES.** In other cases prices have been established after negotiation between the C.D.T.A. secretary or one of its member firms and the manufacturer concerned. In such cases the representative of C.D.T.A. and the manufacturer agree on the prices to be charged in Canada. These prices are generally arrived at by the application of the price formula. American manufacturers whose products have been priced in this way include:

Columbus Dental Manufacturing Company, Columbus, Ohio  
The Dentists' Supply Company of New York  
Ohio Chemical & Mfg. Co., Cleveland, Ohio  
Gomco Surgical Manufacturing Corp., Buffalo, N.Y.  
Ritter Company, Incorporated, Rochester, N.Y.

There is a good deal of documentary evidence to this effect and confirmation of the practice was given by the oral evidence of witnesses. One example from the evidence is cited. A letter from Dr. J. H. Moyer, of the Columbus company, to Mr. D. L. Lawrie, C.D.T.A., dated March 3, 1942, contains the following statement:

"At the Chicago meeting last week, along with others, I discussed with Mr. Alexander arrangements for a trip to Toronto for the purpose of determining prices for the sale of our New Hue Facing and Backing in the Canadian territory . . .

[Mr. Alexander] suggested that I write to you as secretary of the Canadian dealers' group for dates and final arrangements. Therefore, Don, if you can arrange for me to meet with the four companies representing the Canadian dealers, I think that either March 20 or 27 would be a convenient date for us and we can probably complete all necessary details and negotiations in one day." (Exhibit 83)

On receipt of this letter Mr. Lawrie made the necessary arrangements with the four Toronto dealers and with Columbus, the meeting was duly held, and prices were agreed upon. These prices were then communicated to all the C.D.T.A. dealers by Columbus and by the C.D.T.A. secretary. Regarding this transaction Mr. Lawrie stated in evidence that this was not an uncommon way to arrive at prices, and although he did not remember he presumed that the prices were set according to the price formula. (Evidence pp. 663-666).

## 2. Products of Amalgamated Dental Company

The Universal Price Book lists prices for dental instruments and other sundries imported from Amalgamated Dental Company of the United Kingdom. This company appears to make no effort to establish the prices at which these

goods shall be sold in Canada, but on occasion seeks information from C.D.T.A. as to the prices which have been fixed. This appears clearly in the following quotation from a letter written by Amalgamated to Mr. Lawrie as C.D.T.A. secretary on August 10, 1945:

"Quite apart from the foregoing, but taking this opportunity of now writing to you, will you please inform us as to the prices at which our products are sold in Canada; we do not appear to have any information in our records and would be very interested to hear if you can supply such detail, what retail prices have been fixed for Amalco lines and how they were arrived at.

Writer thinks it to be the courteous and correct procedure to approach you in this connection rather than write to each customer individually." (Exhibit 100)

The prices are arrived at by the Price Book Committee under the direction of its secretary, as shown by the following letter from Mr. Lawrie to the late Mr. J. W. Brent, a member of this committee, written January 24, 1939:

"As you know, the Canadian Universal Price Book is being prepared for the printer and I would appreciate very much, having your suggestions regarding prices for the Ash items.

I will be glad to meet with you to go into these prices if this would be of any assistance. You are more familiar with the basic costs and transportation costs on the Ash line than I am and I have always counted on your co-operation in arriving at the retail prices here." (Exhibit 106)

After the death of Mr. Brent, the work of establishing these prices devolved upon Mr. J. K. Laird, the Ash-Temple representative who succeeded him on the Price Book Committee, as shown in the following letter from Mr. Laird to Mr. Lawrie:

"Enclosed you will find our suggestions for price changes of Amalgamated Dental items, made necessary by the recent reductions in the British Preferential Tariff. In some cases you will note, particularly in the case of vulcanizer parts, that the prices have even been increased in spite of the reduction in Tariff, but this is due to increased prices from England. In other cases you will note that we suggest no change in the prices; this being due to the fact that the Tariff reduction was offset by increased prices, or that the small change would be insignificant." (Exhibit 176)

In his evidence Mr. Laird said that these prices were determined by taking the laid-down cost in Toronto and adjusting it to arrive at a retail price which would allow the associated dealers a discount of 40 per cent from selling price.

The role of Mr. Brent in fixing Amalgamated prices was explained by Mr. Lawrie by the fact that he had previously been the managing director of Claudius Ash Sons & Company (Canada) Ltd. (a subsidiary of Amalgamated) and that after the business was merged with that of the Temple-Pattison Company he continued to be their agent. He thought that after Mr. Brent's death some arrangement existed between Amalgamated and Mr. Laird. However, no other evidence was adduced or was found in the documents to support this contention, and both Mr. H. G. Harris, vice-president of Ash-Temple, and Mr. Laird himself stated that their company was not the agent of Amalgamated in Canada. The documentary evidence shows clearly that Amalgamated sells to all the dealers in C.D.T.A. and, as has been noted in Exhibit 100, looks to the C.D.T.A. secretary for price information.

### 3. Private Brand Articles

Listed in the price book is a range of sundry products which are sold under the private labels of the Toronto dealers. When the same product is sold by two or more dealers there is frequently an identity in prices of the competing brands, examples being appointment books, lathe brushes P12B, cartons for waste receivers, paper and cloth discs, separating discs, air-chamber metal, mercury, cone-socket mirrors, engine oil, laboratory pumice, temporary stopping, linen finishing strips, composition tin-foil, base-plate wax, Denco Coecal and Ash-Temple artificial stone.



There is evidence that in some cases the prices of these private brand goods have been agreed upon by the various dealers, and that the price book secretary scrutinizes them as they are revised with a view to keeping them uniform. A few illustrations of this type of price-fixing are given below.

In the 1934 Welfare Committee memoranda, on page 7, dated March 15, 1934, there appears the following item:

"Agreed (Telephone)

*Prices on private label Rubber*—as per attached list. Effective immediately on receipt of multigraphed copies of new list." (Exhibit 23)

On September 9, 1939, the following letter was sent by the C.D.T.A. secretary to all Head Offices:

"It is recommended that the laboratory prices on Base Plate Wax in five pound packages be \$4.

This price is not subject to exchange premium surcharge." (Exhibit 72)

Mr. Lawrie's evidence on this exhibit was that all the wax sold under private label was supplied by one manufacturer, and that this manufacturer may have suggested the price. This may have been the case, but it is still the fact that the price was fixed and adopted by all the dealers and that in the most recent price book the wax is still identically priced by all the dealers handling it.

Two letters written by National Refining to Mr. Lawrie on December 6, 1940, submit National prices for a new price book about to be published. Both letters request the secretary to check the prices and:

"... if you find any of these prices out of line with your own, similar, standards will you kindly phone me for the necessary adjustment." (Exhibit 114)

The Universal Price Book lists mercury of private brands at identical prices and at a figure 25 cents per pound less than the prices of Caulk and White. The following excerpt is from a letter written by the late Mr. H. P. Temple to Mr. E. E. Rogers, his western manager, on May 27, 1941:

"...there always has been an agreement with the dealers that private brand mercuries should be sold, I think, at 25 cents a pound less than Caulk's and White's..." (Exhibit 162)

In another letter from the President of Ash-Temple to the firm's Edmonton branch, dated June 9, 1941, the mercury agreement is again referred to:

"Mercury. There is an understanding that private brand mercury should be sold at a certain price and in Ontario the firms are adhering to that price..." (Exhibit 163)

In 1941 the Ash-Temple Company and Denco agreed upon prices for their artificial stone and Coecal respectively as is indicated in the following extract from an Ash-Temple circular letter of July 4, 1941 to Ontario and Quebec branches:

"Sometime ago our opposition The Dental Company called up and arranged prices on Coecal and Ash-Temple stone which we agreed to and these prices were put into effect." (Exhibit 151)

According to the evidence of Mr. H. G. Harris of Ash-Temple, Denco failed to keep this agreement and a "price war" resulted. Following this period of competition, he said, prices of both brands "ironed themselves out" at \$10 per bag. (Evidence, p. 965). However, later correspondence indicates that this process of ironing out received some assistance from the members of the two companies. A letter from Denco to Denco (Eastern) dated October 17, 1944, states:

"Howard Harris has given his word that if this agreement is made he will rigidly follow this price set-up." (Exhibit 236)

The prices referred to in this exhibit are the same prices as appear in the Universal Price Book for both Coecal and artificial stone, with one exception explained by Mr. J. K. Laird as a misprint. (Evidence, p. 1090).

It appears from Mr. Laird's evidence that in 1945 further negotiations took place between Laird and Harris and the Denco officials which resulted in a price of \$9.50 per bag being established for laboratories while the price to dentists remained at \$10. These discussions resulted in the following price notice sent by Mr. Laird as price book secretary to the C.D.T.A. members on August 28, 1945:

"The writer has been requested to advise you of the following change in the price of Coecal of the Dental Company, and Artificial Stone of the Ash-Temple Company.

Will you please delete the figure (6) six which appears in the following line:—

Laboratories,

6-100 lb. bags..... \$9.50,"

(Exhibit 192)

#### 4. Products of C.D.T.A. Manufacturers

Prices and terms relating to products in this class are discussed in Section VII of this report.

#### 5. Terms of Sale

One section of the Universal Price Book, as already indicated, is devoted to terms of sale to different classes of customers. Efforts to secure agreement as to uniform terms of sale and rates of discount and the maintenance of agreed policies appear to have been among the most important aspects of Association activity throughout the period for which records have been found. The schedules in the Universal Price Book listing the various rates of discount or terms of sale and the class of customer to whom they may be granted are replete with such directions as "No Cash Discount", "[discount] to be computed on the basis of smallest Unit price" or "the discount . . . will be deducted from the following prices."

Terms for contract sales of equipment were adopted at the C.D.T.A. meeting held on December 27, 1930. The meeting held on February 19, 1931, adopted terms for dental colleges and the Montreal General Hospital and for other hospitals and school clinics. The Welfare Committee agreed on March 28, 1934, upon discounts and terms for equipment to the profession, and for all classes of goods to dental colleges, public hospitals, school and other clinics, government institutions and commercial laboratories. These were adopted at the meetings of C.D.T.A. held on April 19, 1934, in Toronto and on April 21, 1934, in Montreal. (Exhibits 21 and 22).

The following agreement is recorded in the minutes of May 7 and 8, 1934 of the Welfare Committee:

*"That no prices or rates be extended to any dentist other than those established by manufacturers and distributors and set forth in the Universal Price Book."*

(Exhibit 23, p. 16)

In the ensuing years the terms were frequently modified or reaffirmed by agreement at the C.D.T.A. meetings, resolutions appearing in the minutes of those held on February 15, 1935, November 22, 1935, March 20, 1936, and February 12, 1937. Discussions of terms also took place at other meetings, usually arising out of reports of the Price Book Committee.

The agenda of a meeting of this committee held on August 30, 1945, includes the following items:

"Corrected list of Government-supported hospitals

Discounts to Department of Veterans Affairs

Discounts to Institutions

Letter to each dealer to abide strictly by such discounts."

(Exhibit 131)

The examination of Mr. L. E. Thompson on this and other exhibits relating to the proceedings of the committee, of which he was chairman, confirms that terms were being set and reaffirmed as late as August, 1945, that at this time dealers were still expected to observe them and that the committee made recommendations as to revisions which were submitted to the general meeting for approval. (Evidence, pp. 866, 868, 922 and Exhibit 143).

The preoccupation of the C.D.T.A. with regard to terms in 1945 is a further confirmation that the standing resolution, that prices be adhered to, has continued in force throughout the period. Clearly the prescription of such detailed terms would be a sheer waste of time unless the prices from which they were calculated were uniform.

Although there are quantity rates on certain products, the terms themselves are unrelated to quantity purchases. They are fixed in the manner indicated above according to the class of customer to which goods are sold. The dentist is granted the least favourable terms, being allowed a discount of 2 per cent for cash payment of his current account by the 10th of the following month, while the commercial laboratory is allowed 4 per cent, and 5 per cent on precious metals. Both laboratories and dentists purchase their requirements at list prices, subject to the cash discounts mentioned, and these list prices include any quantity rates available. On some products the list prices are higher for the dentist than for the laboratory.

Institutional sales are not subject to cash discounts but instead special discounts at higher rates are allowed from the smallest unit prices of most products or, on some goods, from an agreed schedule of prices. All institutions enjoy a five per cent discount on precious metals. Hospitals receive only 10 per cent and 8 per cent (the sales tax exemption) from list prices of sundry merchandise, while dental colleges and the Dominion Government departments receive 25 per cent.

The existence of the uniform terms has become well known to institutional purchasers, who sometimes negotiate with the association to secure the most favourable terms possible, even though they continue to call for tenders if they normally operate in this manner.

One institution, the Faculty of Dentistry of the University of Toronto, has realistically accepted this situation and has endeavoured to obtain the best value possible for its students and the most efficient distribution by direct arrangements with the four Toronto dealers, associated together as The Toronto Dental Dealers. By these arrangements the kits required by the students for their courses have been purchased and distributed by the dealers operating as a syndicate. Ash-Temple has normally supplied about two-fifths of the total sales to the University and the other dealers one-fifth each, but profits from operations have always been shared equally among the four members. None of the independents participates in this arrangement. Under it the students use only the standard supplies of the Association dealers, become accustomed to their use throughout their course and are consequently influenced, when they engage in practice, to continue to use only these products. This was recognized by Mr. H. P. Temple in his presidential speech to the Association on March 20, 1936, when he said:

"When the students graduate they are now familiar with, and in most cases, desire to continue using the materials sold by the Association dealers." (Exhibit 26)

A system of uniform terms under which sellers agree to discriminate between customers is not one which can be relied upon to serve the interests of the public. In a competitive system the normal procedure, when competitive tenders are submitted is for each dealer to quote on a specific bill of goods making such price concessions as he can by reason of economies he can effect in filling the particular order. In the present case it is difficult to see why, when purchasing the same quantities, dentists are treated less favourably than



commercial laboratories; and if tenders were on a really competitive basis institutions purchasing in wholesale quantities might secure even more favourable terms than they do now, especially if they could secure supplies directly from manufacturers.

## 6. Western Prices

The alphabetical sundries section of the Universal Price Book is published in two editions, one applying to Eastern and one to Western Canada. The same articles are listed in the two editions, but western prices are higher than eastern on some articles. The western prices apply generally to all territory west of the head of the lakes including Port Arthur and Fort William.

The three C.D.T.A. dealers which are concerned with the western territory are Ash-Temple, Denco (through its subsidiaries) and B.C. Dental. The evidence shows that the western prices have been determined by agreement between Denco and Ash-Temple in Toronto, and submitted for inclusion in the price book. In addition local agreement on the prices of particular lines is indicated in arrangements between B.C. Dental and the Vancouver branch of Ash-Temple.

In a letter to all his western branch managers the President of Ash-Temple wrote on January 31, 1941:

"... I have arranged a meeting with The Dental Company for next Monday afternoon when we will discuss the advance in price for goods sold in Western Canada and I hope we will have those sheets reprinted with western prices on sometime before the end of next week.

Those new sheets with the western prices will be dated and numbered the same as your present Ontario price sheets, so all you have to do when you get the new sheets is to take out the equivalent eastern price sheet and stick in the western price sheet.

Of course, a great number of the sheets will have no changes on them, so in the meantime you know pretty well how much you have added on in the west for heavy goods, etc., and just continue to add this on until you get the new western price sheets." (Exhibit 157)

On February 5, 1941, Ash-Temple forwarded these sheets to Mr. Lawrie as shown in the following:

"Enclosed please find price book sheets with recommendations of the Dental Company and The Ash Temple Company as to additions for Western Canada incorporated therein." (Exhibit 177)

Messrs. J. K. Laird and L. E. Thompson, of Ash-Temple and Denco respectively, both stated in their evidence that they did the work in connection with these prices. Mr. Thompson also admitted that during his time on the Price Book Committee these price differentials were discussed and settled at meetings of that committee. (Evidence, p. 874).

A letter of March 6, 1941 to Ash-Temple branches from the company's president carries a postscript to the Vancouver branch which reads as follows:

"Would suggest you get in touch with the B.C. Dental and go over these prices and perhaps there are certain things which we have not added on sufficient and you and Ted could make any necessary increases." (Evidence, p. 999)

The "Ted" referred to in this letter is Mr. A. E. Sinclair of B.C. Dental. Mr. Rogers, the western Vice-President of Ash-Temple, who also manages the Vancouver branch, was examined on this exhibit. His explanation was:

"We had no power however to change any prices, I would presume from that postscript that what Mr. Temple meant was this; that if in checking over these prices we found some errors or some omissions that he would ... expect me to report back ..."

Yet a letter from Mr. Rogers to his head office, dated November 21, 1944, referring to freight charges on equipment, which do not come under the general system of differential prices but are shipped F.O.B. the various depots, stated:

"There is really only three dealers' concerned about the Western Business, namely; the Dental Co., The B.C. Dental, and ourselves.—Why not draw up a list with the Dental Co. in Toronto to cover the Middle West and we will draw up a list with the B.C. Dental. As a matter of fact, we already have an agreement with the B.C. Dental for British Columbia." (Exhibit 172)

Mr. Rogers in his evidence denied that such an agreement had existed.

The witnesses who were examined with regard to this price differential stated that it was due to the higher cost of shipping goods to the West and that determination of the amounts to be added on various products was based on their experience of an average cost of freight. An examination of the price differentials between eastern and western zones does not reveal any consistent pattern that might result from actual shipping costs. Many articles are listed at the same price for both zones, on others the same differential applies to weights of one ounce, one-half pound and ten pounds. Such discrepancies suggest that the schedules for eastern and western zones are intended more particularly to maintain uniformity of prices than to assist in the determination of actual costs of transportation.

## 7. Appraisal Values and Refinishing Prices

Throughout the minutes and other documents there is a good deal of evidence with regard to the adoption of appraisal schedules. At the C.D.T.A. meeting held on December 27, 1930, Mr. Lilly is recorded as urging the adoption of the A.D.T.A. used equipment appraisal sheets adjusted to meet Canadian requirements. Later in the same meeting the subject was discussed and it was decided to place against each item the minimum resale price, the matter being referred to the appraisal committee to make a further report after receiving the American list. At the meeting held on February 10, 1931, Mr. McTavish, on behalf of the committee,

"...presented a very comprehensive report embodying allowance prices on used equipment items and resale prices 'as is' on resale prices 'refinished' and recommended its adoption.

On motion of Mr. Paterson, seconded by Mr. Neate, the principle of establishing appraisal list containing allowance prices, selling prices 'as is' and selling prices 'refinished' was adopted, list to be printed and distributed as soon as possible."

(Exhibit 16)

At the meeting of February 12, 1932, Mr. McTavish reported that this list had been prepared and published, and at the same meeting the following resolution was passed:

"On motion, the Appraisal Committee was requested to review Appraisal List, giving special attention to X-rays." (Exhibit 17)

The Welfare Committee proceedings of 1934 show that the four Toronto dealers agreed on one occasion to reaffirm the appraisal list dated June 5, 1933, with certain specified price changes. At a later meeting other changes were made. Throughout the succeeding years the list was constantly under review by the Appraisal Committee, which reported regularly to the C.D.T.A. meetings.

The appraisal section of the present price book is dated May 1, 1946, and includes maximum allowances for used equipment, prices to be charged for services in connection with refinishing used equipment, and minimum selling prices of secondhand equipment which has been refinished. No list appears for selling prices "as is" which was in effect throughout the thirties, and the reason was given by Mr. Lawrie as follows:

"... the minimum resale price did not work out, because nobody paid any attention to it." (Evidence, p. 430)

The oral evidence of the various C.D.T.A. witnesses was to the effect that the turn-in values found in the appraisal schedule were merely a guide and that

actual allowances which were made in any instance varied. There is evidence that salesmen were required to quote the allowances in the schedule, but it was stated that equipment deals have been closed by senior officials in the various firms and salesmen are not allowed any initiative in this connection.

There is no doubt that the association regards this work as of some importance, as shown by the following letter to C.D.T.A. members from the secretary, dated November 13, 1940:

"I am enclosing a suggested allowance for lights.  
Will you kindly check over this list and be prepared to make recommendations at our meeting Saturday." (Exhibit 75)

Extensive alterations were made in this list, apparently at the meeting, and a revision was sent out on November 21, 1940, from Mr. P. N. Alexander, who concluded:

"I would be glad if you would look this list over carefully, and let me know if you approve." (Exhibit 76)

Refinishing prices are the charges made by a dental dealer to a customer who requires his old equipment refinished for his own use. This work is done by Equipment Manufacturing Company and National Refining. The prices, according to the oral evidence of Mr. Lawrie, are obtained from these two firms by the association and incorporated in the price book. On further examination Mr. Lawrie agreed that proofs of the refinishing prices would be sent to the two firms and that sometimes prices would be brought into uniformity. (Evidence, pp. 438-439). The prices contained in present refinishing sheets dated May 1, 1946, do not appear as the prices of National and Equipment Manufacturing but as common prices for refinishing articles of equipment as listed. They apply to all the C.D.T.A. dealers as well as the two firms which do the work.

The basis upon which the refinishing list was handled by the Appraisal Committee in 1944 is shown by the following excerpts from letters written by Mr. P. N. Alexander on March 17, 1944, to National Refining. He wrote as follows:

"This is the suggested Refinishing price-list. Will you look it over carefully, and then call me, in case you want to discuss any items?

If I do not hear from you, I will assume that you are in accord with these prices. They have already been sent to Jack Laird, and they will be printed and published forthwith unless you see fit to make any change." (Exhibit 289)

At the same time he sent the list to Mr. J. K. Laird, the Price Book secretary:

"This is the Refinishing price list.

Please hold it for a day or two, until we get Bill McTavish's O-kay, and will you please have it printed as quickly as you can? While we are not doing much refinishing, yet we are entitled to full margin on all that we are doing." (Exhibit 290)

The various activities of C.D.T.A. which have been reviewed in this chapter have all been engaged in with one objective—that of removing and preventing the possibility of price competition among dealer members of C.D.T.A. Whatever product is taken, whether made in Canada or imported from the United States or England, whatever class of purchaser is considered, or whatever section of Canada is selected, the record shows that steps have been taken by the association to see that all the dealers have one price to quote the prospective purchaser.

It has been argued on behalf of C.D.T.A. members that the arrangements revealed in the records which have been cited do not constitute an agreement to fix prices. In face of the fact that price competition among dealer members has been so studiously guarded against and that efforts have been made to buttress the price arrangements at each point of possible divergence, it is difficult to think of an agreement that would be more repressive of price competition.



## VII. PARTICIPATION OF C.D.T.A. MANUFACTURERS

The membership of C.D.T.A., as indicated in section three of this report, includes seven manufacturer members as well as the eleven dealer members (regarding the five Denco firms as separate units). The seven manufacturer members are:

The L. D. Caulk Company of Canada Limited  
Cook-Waite Laboratories Incorporated  
Equipment Manufacturing Company Limited  
Goldsmith Bros. Smelting and Refining Company Limited  
Novocol Chemical Company of Canada Limited  
S. S. White Company of Canada Limited  
Williams Gold Refining Company of Canada Limited

Five of these companies have their headquarters in Toronto, two of them, Cook-Waite and Williams, are located in Fort Erie, Ontario. Six companies are subsidiaries of or are closely related to American companies; the seventh, Equipment Manufacturing, is a subsidiary of Ash-Temple, which also holds a 45 per cent stock interest in Williams. None of the manufacturer members actually manufactures on a large scale. It is impossible to indicate the total volume of their products manufactured in Canada because their sales of Canadian-made and foreign-made products are not shown separately. In most cases they perform a packaging rather than a manufacturing function in Canada, and act as selling agents for their parent companies. Also a considerable part of their factory work is in the repair and refinishing of equipment and other products.

Manufacturer members, throughout the period to which association records relate, have normally attended and taken part in the C.D.T.A. meetings. They appear to have participated in discussions and arrangements relating to the prices at which their goods are to be re-sold by dealers. Except when conditions of competition or potential competition from outside sources have dictated otherwise, they have followed the traditional association policy of restrictive dealing. They have subscribed to the price book system with regard to the listing of their products and the application to them of agreed-upon terms and discounts. From time to time groups of manufacturer members have engaged in direct price-fixing within the association.

From 1930 to 1945 the manufacturers were "associate" members of C.D.T.A. Their status, according to Mr. Lawrie, was that while they attended the meetings and were accustomed to take part in the discussions and exercise their votes, they did not hold office. They have not been represented on C.D.T.A. committees, with the exception of the Gold Committee or Group which has been appointed from time to time and which consists of representatives of the gold manufacturers. One other exception is that Mr. Lawrie himself, after many years as secretary, continued in that office after he became managing director of Caulk, Canada, in 1941.

By a resolution passed at the annual general meeting held on May 18, 1945, associate membership was abolished and the manufacturers became full members. Dr. Thompson, of Denco, who was President of C.D.T.A. at this time, explained in evidence (p. 1284) that this action was taken because there appeared to be no value in having two classes of membership. Mr. L. E. Thompson amplified this explanation by asserting that in his experience the manufacturers had always attended the meetings and made their suggestions and recommendations as if they were members and the constitutional change was made in recognition of this fact. (Evidence, p. 889).

## 1. Precious Metals

A. DISTRIBUTION. The C.D.T.A. members principally engaged in the manufacturing and refining of precious metals are Williams, Canada, and Goldsmith, while National Refining still carries on some minor manufacturing operations. Denco is regarded by C.D.T.A. as a gold "manufacturer" because it distributes the products of Baker Platinum of Canada Limited under the Denco trade-mark and thereby secures control over the prices of these goods. Baker is a subsidiary of Baker and Company of Chicago, and Denco is the Canadian distributor of its precious metals for use in dentistry.

Non-member firms which produce dental golds include Johnson Matthey & Company Limited of Toronto and Montreal, Precious Metal Works (Canada) Inc. of Montreal, and the Pacific Smelting and Refining Company on the west coast.

Competition from these independent manufacturers has made it impossible for the C.D.T.A. manufacturers to observe fully the rule confining sales to dealer members, and sales are made by them to independent dental dealers and a few large laboratory accounts who might otherwise buy from the independent manufacturers. As dentists traditionally purchase only from dental depots, the bulk of the business available to the independent gold manufacturers is from the commercial laboratories. This has led to common action by the member companies to increase prices to dentists and lower prices to commercial laboratories. This discrimination in prices of gold, as well as in terms, is recorded in the Universal Price Book. That it was the result of agreement is evident from a speech made by Mr. Alexander of Goldsmith to the A.D.T.A. dealers' section in 1939, the relevant passage being:

"Some time ago we tackled the Gold problem. Maybe you don't consider it a problem any more. We raised the list prices, and decided to give the laboratories a discount of 5 per cent on monthly settlements. This has enabled us to retain a large percentage of the gold business that is done in Canada. The situation in Quebec is not quite so favourable, as there are a good many independent refiners operating in that district." (Exhibit 280)

Mr. Alexander's evidence, in part, was as follows:

"Q. Was that something to be discussed by the Gold Group?

A. Yes, the matter was discussed by the Gold Group.

Q. Before action was taken by any company?

A. Yes. Yes, the matter was discussed by the Gold Group."

(Evidence, p. 1484)

B. PRICE FIXING. The first reference to precious metals in the available minutes of C.D.T.A. occurs in connection with the appointment of the Gold Committee at the meeting held on December 16 and 17, 1930. A representative of each of the manufacturing companies except Williams was appointed, and according to the secretary's evidence this company was represented on the committee by Mr. J. W. Brent, then vice-president of Ash-Temple, which company owned a considerable stock interest in Williams.

The minutes of the general meeting held on February 9, 1931, record the following:

*"Precious Metals Price List:*

The Precious Metals Price List was presented by Mr. Brent and it was adopted, the large user list to be printed for the Master Pricebook only." (Exhibit 16)

The examination of Mr. Lawrie on this matter was, in part, as follows:

"Q. Mr. Brent was also a member of the gold committee which had been appointed at the meeting in December?

A. Yes, that is right.

Q. Was that the business of the gold committee, to present the precious metals price list?

A. They apparently compiled it and presented it.

...

Q. If you did receive this price list as presented, would you take that as being the basis on which to prepare the sections in the price book relating to those products?

A. Yes." (Evidence, pp. 496-497)

Questioned further whether the independent manufacturers charge the same prices as the C.D.T.A. members, Mr. Lawrie stated that he did not think so, and that the list in question covered the prices of only four association firms.

(Evidence, p. 498)

The following resolution was passed at the annual general meeting held on February 12, 1932:

*"Gold Committee:*

Mr. Nussbaum reported that new gold price lists, retail and large user, had been prepared and published. He recommended that the Gold Committee be discontinued. Recommendation adopted." (Exhibit 17)

In later years, however, the proceedings of the association show that this committee continued to function under the name of the Gold Group.

A significant document found in the files of the C.D.T.A. is headed "*Changes and Additions to Recommendations of September 13th. Special Meeting at Buffalo, N.Y., November 14, 15, 16, 1933*". Mr. Lawrie testified that in his opinion this document was the record of an American gold manufacturers' group that he obtained from the Williams Company or one of the gold manufacturers. (Evidence, p. 705). It sets forth formulae for computing prices of precious metals and their alloys, in a fluctuating market, according to their precious metal content. Recommendations contained in this document include:

"No. 5. That present trade prices of plates, shells, discs, matrix metals, nuggets, carat wires (18 to 24 kt), as set forth in recommendations of September 13th be reaffirmed. For list prices add 10 per cent to wholesale instead of 8 per cent as listed in recommendation of September 13th. Add one cent (1c) for fraction of  $\frac{1}{2}$  cent or over.

No. 6. That a new formula known as Formula 'C' be adopted for trade name casting golds containing not less than 750 fine gold, and not more than 1 per cent of platinum group metals. For determining prices of these golds add 18 per cent to intrinsic lflor trade price; and  $12\frac{1}{2}$  per cent to trade price for list price..." (Exhibit 104)

This document also establishes that all products were priced in the manner indicated in these recommendations, set percentages being added to intrinsic price to give trade price, and to trade price to give retail price. Uniformity in the basic or intrinsic price was secured by means of the definite formulae set forth. Allowances for scrap gold were established.

The procedure for establishing Canadian prices, as stated by Mr. Alexander, was that normally Williams set the prices and the remaining manufacturers fell in line. The sequence of events in establishing prices was given by him as follows:

"... The government sets the price of the basic commodity and in actual practice what happens is that one manufacturer sets his price according to his changed costs, and the other manufacturers, according to the formulas they have, match up with the original manufacturers' prices..." (Evidence, p. 1454)

"... If I were faced with the job of making a change in prices of Goldsmith golds I would determine what our cost was in the matter and add the normal amount of margin of profit, based on the fact that we would have to sell it to the distributor and he in turn has to make his profit. It would be based on the actual cost of the product." (Evidence, p. 1455)

This explanation is completely consistent with the system of price fixing disclosed by Exhibit 104, and shows that the existence of uniform agreed-upon margins between intrinsic and trade (or wholesale) prices, and between trade and retail prices, is sufficient to assure uniformity between manufacturers' prices as long as they continue to use the same formulae for calculating costs. It points clearly to the relevancy of this document in the record of joint discussions of gold prices which have been found in this investigation.



At the meeting of the C.D.T.A. held on March 20, 1936, the following resolution was carried:

"Mr. McKenna moved, seconded by Mr. Alexander, that subject to the approval of the Gold Group the Precious Metals Price List in Universal Price Book be reprinted on the basis of gold at \$35 per ounce. Carried." (Exhibit 27)

Immediately after the C.D.T.A. meeting the Gold Group convened and "approval was given to the suggestion *re* reprinting Universal Price List on basis of \$35 gold." The members present at this meeting were:

C. A. McKenna—S. S. White, Canada  
R. J. Dunlop—National Refining  
Henry Thompson—Denco  
H. L. Nussbaum—Dominion  
M. Williams—Williams, Canada  
L. C. Williams—Williams, Canada  
D. L. Lawrie—Secretary

The manner in which this decision was carried out appears from the correspondence. Mr. R. W. Freeman, Sales Promotion Manager of both the Canadian and American Williams companies, wrote on March 28, 1936 to Mr. J. W. Brent, in part as follows:

"Now that gold has been pretty firmly established at \$35 in Canada it seems logical that we could do away with the several price brackets now in use and have an established price in Canada like we have in the United States.

I will shortly have a new formula to send to all Canadian gold dealers or manufacturers for pricing golds at the \$35 rate. We naturally would like to have all of them line up with us on the new price change." (Exhibit 198)

Notice of the new formula was sent out on May 20, 1936, when identical letters were written by Mr. Freeman to Ash-Temple, National Refining and S. S. White, Canada. These letters state:

"At last I am sending you some suggestions and data for change in prices for precious metals for the Canadian trade.

I am sending recommended schedule for arriving at wholesale and retail prices of various dental golds on a basis of \$35 gold. This recommendation is the same as used in the States and it has worked out most satisfactorily.

You will notice that it slightly increases prices of some items and decreases prices of wires, casting golds and some other products which were originally priced a little high. We would also eliminate any but the one established price because it is most unlikely that there will be any further fluctuation in the price of gold to amount to anything, and because we have found that a definite established price is a much better proposition for the gold business.

I am sending along one of our American price lists and prices in this list are arrived at according to the enclosed schedule. Canadian prices would be the same as those in the States except that the 8 per cent sales tax would be added to the retail prices of certain items. In the price list you will find that we have marked out quantity rate prices which are in effect in the States but would not be in effect in Canada. We would also eliminate all information on pages 2 and 3 of the price list.

I am sending this same information to other interested parties and would suggest a meeting to be called as soon as possible to discuss this proposition so that new prices can be put into effect as promptly as possible. If there is any question please drop me a line." (Exhibit 199)

Quantity discounts on gold products, as the fourth paragraph of this letter indicates, were not to be made available to Canadian consumers, although they had been in effect in the United States. The C.D.T.A. has consistently maintained the principle of no quantity rates on gold, but at times independents have made difficulties. A case in point is referred to in a letter from Mr. L. C. Williams to Goldsmith, written on February 9, 1944:

"I have just returned from Montreal and find that the gold business is being somewhat upset by the offering of quantity rates and especially by one of the outside manufacturers." (Exhibit 283)

In this letter Mr. Williams stated that he had no objection to the low price which was being charged for a certain class of gold, because it was instituted to meet independent competition. He did object, however, to its classification for the purpose of determining list prices. The classification, he contended, was contrary to that agreed upon. He enclosed a schedule showing classifications of precious metal products with the established minimum retail mark-ups and maximum dealer discounts. Referring to it Mr. Williams said:

"This is based on the classification of precious metals used in the computation of our trade and retail prices, which we all agreed to follow." (Exhibit 283)

Goldsmith replied that they had no knowledge of this classification, but they were reminded of it by Mr. Williams in his letter of February 12, 1944:

"As far as the classification for the computation of trade and wholesale prices,—this is nothing new. If you will refer to your 1936 File, month of May, you will find considerable correspondence on this subject which covered the developing of a new price list for Canada. At that time, all the members agreed to follow this schedule." (Exhibit 284)

These two letters show conclusively that the proposals which were made in Exhibit 199 in May, 1936 and which arose from the decision of the Gold Group led to discussions at that time which resulted in agreement amongst C.D.T.A. members on classifications and on price schedules.

The question of adverse exchange was also raised in Mr. Williams' letter of February 12, 1944. He said:

"Gold was then stable at \$35 [in 1936], but since then it has increased 10 per cent, due to the discount of Canadian dollars in terms of gold. Therefore, all former prices had to be increased 10 per cent on which we all agreed.

If my memory serves me correctly, a meeting was held in the Dental Company of Canada Office, and you were somewhat against increasing the prices a full 10 per cent." (Exhibit 284)

The decision to incorporate the 10 per cent exchange premium in the selling price was made apparently early in December, 1940, as shown in the following letter written by C. A. McKenna to Paterson on December 9 of that year:

"At a meeting of the Gold Manufacturers' section of the Canadian Dental Trade Association, held last week, it was decided to incorporate in the selling price of all Gold products the premium of 10 per cent which has heretofore been added to the listed price as published in the Universal Price Book. New sheets are being printed for the Universal Price Book, and we are enclosing herewith altered price lists of our Gold products, showing this premium as part of the selling price." (Exhibit 310)

An example of the way in which changes are sometimes made in the price book is seen in correspondence relating to prices of certain items in the precious metals section. A discussion on "Precious Metals" was on the agenda for the C.D.T.A. general meeting of November 16, 1940, but the minutes contain no reference to any discussion on this subject or on other subjects that had been listed on the agenda. The correspondence shows, however, that on December 5, 1940, Mr. Lawrie wrote to Williams stating that the precious metals section of the price book would be reprinted as soon as the various price lists were secured. Williams and the other manufacturers duly forwarded these to the Secretary, who on January 6, 1941, sent proofs of the precious metals section to the various manufacturers with the comment that "there will, no doubt, be some necessary adjustments before the final copy is Ok'd."

Mr. L. C. Williams, in replying to this letter on January 7, 1941, made certain corrections in the Williams list, and also stated:

"On comparing competitive price lists, I find a wide range of prices on alloys of the same fineness, especially in the Dental Company's price list, and apparently they are not adding the full 10 per cent Surcharge as agreed on. Therefore unless these prices can be brought in line with the other manufacturers, it is apparent that a price war will result. Possibly this should be brought to their attention, and if these prices can not be brought up to the other manufacturers' it will no doubt be necessary to call on the other manufacturers for new lists, to compete with their prices."

Informal negotiations took place between the secretary and the Toronto manufacturers, as shown by pencilled memoranda which were made exhibits at the hearings, and which Mr. Lawrie stated represented information that had been given to him by Mr. H. L. Nussbaum, of Goldsmith, and others. (Evidence, pp. 660-662). These questions were incorporated in Mr. Lawrie's letter of January 16, 1941, replying to the Williams' letter last quoted. This letter reads in part:

"Thank you for your letter of January 7th re precious metals price list. I am sending the issue of March, 1940, which is to be superseded by the new list.

The Dental Company have made adjustments in plate and solder prices to conform with standard and their casting ingots 'J' are now designated as 22K and 'K' as 24 K.

The changes you authorized in your list have been made.

I have been asked to request your permission to remove from the list your two solders not marked as to fineness, page 14 of proof—known as Regular and Buffalo."

Williams answered on January 18 that they were unable to permit the removal of the two solders mentioned, and on February 11 a letter was written by Mr. H. P. Temple to Williams in the following terms:

"Mr. Lawrie is holding up the new Canadian price book on gold until we get one or two points settled. I understand he has been in communication with you and with Buffalo with reference to the four grades of solder which you manufacture, two of which are not marked with the fineness on same.

As you probably know, the Dental Company have a special ounce laboratory rate on their S.L. and C.L. casting golds put up in one ounce packages and after a long discussion with them they have agreed to discontinue that special ounce rate on those two casting golds on condition that you withdraw from the Canadian price book the two unmarked lines of solder.

I know you are selling a little of this solder to some of the labs and we can go on selling it, but we do not want it in the Canadian price book because if we put it in there, the sale is going to increase at the expense of the good solders.

Also, the Dental Company are willing to cut out their special ounce rate on these two golds if you will agree not to extend direct sales to anymore laboratories in Canada. As far as I know you are only selling two direct, namely, George Poitras and Allen and Rollaston, and I think they are all selling those two, so will you please write Mr. Lawrie and tell him that you are quite willing to agree not to recognize any further laboratories direct, and also, that you are quite willing for him to leave out those two unmarked solders on our Canadian price list.

You can, of course, go ahead and put them in your Canadian price list but we do not want them printed in our own Canadian price list which goes to every salesman."

(Exhibit 146)

This letter was answered by Mr. Freeman of the Williams Company on February 15, 1941 in which he agreed to the removal of the solders and also undertook to sell no other laboratories direct. His letter also stated:

"Your letter of February 11 has been referred to me for further attention.

We are agreeable to cooperating with the Canadian Gold Manufacturers with reference to leaving our Regular and Buffalo Solders out of the Canadian price book, and also we have no intention of selling other laboratories direct in Canada.

We would like, however, inasmuch as we are cooperating with the Group on these matters, to have them line up with us on the matter of meeting our price on Clasp Plate. We are being under-sold at the present time and wish you would take this matter up with Don Lawrie and see what can be accomplished.

We expect, of course, to continue selling our Regular and Buffalo Solders in Canada even though they do not appear in the Canadian Price Book.

If there is any further question please write us."

(Exhibit 147)

That general agreement was reached is shown by the following letter from Denco to Mr. Lawrie, dated February 12, 1941:

"We are sending to you herewith a revised Price List of 'Denco' Golds. You will note that we have changed the description of our solders. We believe that the description given by Goldsmith Brothers is correct and we would suggest that all the other manufacturers of gold follow the same description.

Concerning the slight difference in price between our golds and golds of other houses, we are quite willing that our prices be changed to fall in line with the prices agreed upon by the other houses.

In connection with the one-ounce quantities of 'Denco' 'C' and 'F' Ingots, we have decided to delete these items from the list."



The price book sheets relating to precious metals which were in effect at the time of the hearings were all dated February 25, 1941, with the exception of that of Williams. Williams had revised their February sheet which was reprinted and dated May 1, 1941, and the correspondence indicates that the prices of clasp wires and clasp plates were changed by this one company to "meet other manufacturers' published prices." On examination of all these price sheets it is found that on articles of an identical nature the prices of all the companies are identical. Some examples common to all manufacturers have been abstracted from the price sheets and are shown in the following table:

COMMON PRICES PER DWT OF PRECIOUS METALS (1941)

	Solders, Gold Regular	Solders, Gold Special	Plate Gold
14 karat.....	\$1.28		\$1.82
16 ".....	1.42	\$1.30	
18 ".....	1.64	1.49	
20 ".....	1.82		1.94
21 ".....			2.06
22 ".....	2.10		2.11
24 ".....			2.23

The price of the 24 karat gold plate (being pure gold) is one which affords a ready check as to the margins which were enjoyed by the trade on precious metals because at \$2.23 per pennyweight it is equivalent to a price of \$44.60 per ounce of pure gold. Since at that time the intrinsic value of pure gold was \$35 per ounce, plus a ten per cent surcharge, the retail price of \$44.60 compares with a mint price of \$38.60 including the mint charge of 10 cents. The importance of this fact lies in the contention of witnesses at the hearings that agreement upon gold prices is impossible because the government is their chief competitor. Certainly the spread between \$38.50 and \$44.60 per ounce is ample to permit the operation of price competition.

The margin on this product is, of course, the lowest applicable to any class of precious metal products. Where the gold content is less the spread between intrinsic value as computed by the recommended formulae and the retail price becomes greater. In the case of certain special solders containing platinum group metals the margins have been well over 100 per cent.

Several subsidiary documents throw light on the agreement upon gold prices, chiefly complaints that the agreement was being broken in some particular instance. Typical of such documents is one from Williams to Denco dated June 11, 1940, in which the writer states:

"The main reason I am writing you is regarding a condition we have come in contact with regarding the sale of clasp wire by your Winnipeg branch. It is understood that your Company is selling a Clasp Wire designated as 'I' which according to the information we have before us is sold at three different prices. That is:

Half round at \$1.73 per dwt.

Round at \$1.70 per dwt.

Coils at \$1.61 per dwt.

It is not the price that gives us any concern but if this method is to be used it is certainly going to complicate matters for all concerned. The point we cannot understand is you are selling a half round wire which is not subject to Sales Tax at a higher price than the round wire which is subject to Sales Tax.

Your views on this matter would be appreciated as I do not think it would be advisable for us to cut the prices of our clasp wires 12 cents per dwt. when supplied in coils without first discussing this matter with you as this would only precipitate a price war which we do not consider warranted." (Exhibit 202)

Denco's reply to this letter, on June 14, is reproduced in part:

"Thank you for your kind letter of June 11 and also for drawing to our attention the price at which our 'I' wire is being sold.

We are pleased to be able to tell you that this condition has now been changed and our branches and salesmen have been advised that all our 'L' wire sells at the same price." (Exhibit 203)

Other documentary evidence which is not discussed in detail shows that throughout the period agreements were made between the gold manufacturers as to maximum allowances to be made to retail customers for scrap gold. The effect of such agreements is to reinforce the general price agreements and to render them more inflexible.

## 2. Anaesthetics

In the alphabetical section of the Universal Price Book, the goods of four manufacturers of dental anaesthetics are listed. These are Cook-Waite (successors to Antidolar and Cook Laboratories), Novocol, Abbott Laboratories and Mallinckrodt Chemical Company. The first two are members of C.D.T.A. and the others are not.

The two C.D.T.A. manufacturers sell chiefly through the dealer members, although Novocol also makes approximately ten per cent of its total sales to the surgical supply houses and to other outlets, chiefly for use in minor surgery. Novocol also sells to Casgrain and Charbonneau, which was an old account prior to Novocol's admission to C.D.T.A. The supplies of both firms are unavailable to other independent dental dealers.

Although there is some evidence of price collaboration between the two anaesthetic manufacturers and the C.D.T.A. dealers, no evidence has been found of price agreement between themselves. The prices listed for comparable products in the current price book show considerable variation as between the two firms. It would appear, therefore, that in this case the manufacturers' interest in membership in the association is related chiefly to securing support from the dealers in the sale of their products. This end may be furthered by their own co-operation in prescribing resale prices and in adopting other policies designed to foster the interests of the dealers.

Cook-Waite has refrained from tendering to the Department of Veterans Affairs as the result of an understanding with the C.D.T.A. members. This appears clearly from an exchange of correspondence which took place in 1945 between that company and Mr. Lawrie. Cook-Waite wrote on June 5, 1945, as follows:

"I am very sorry that I did not have an opportunity for a real visit with you because there are some things I wanted to discuss with you . . . one of them in regard to the Veterans' Affairs. It looks to me as if the dealers are going to lose all of this business and that, in the future, bids are going to be made direct to manufacturers.

I talked to several dealers about this and they feel that, if this is to be the case, we should bid direct. However, I don't like to do this because if we do bid direct other manufacturers will do the same and, once this procedure is established, business with the Veterans Affairs will forever be lost to the dealers.

As you know, of course, the anesthetic business of the Veterans' Affairs at present goes direct to a manufacturer. However, we would like to have your opinion on this matter and your suggestions as to how best it can be handled."

Mr. Lawrie's reply on June 8, was:

"I had all of the dealers at luncheon to-day and took the opportunity to discuss your letter with them. It was decided that the dealers should make one more effort to see if the anesthetic business could not be diverted from its present source to your distributors."

Novocol has protected the dealers' interests on government business by protecting their bids against outside competition and by seeking their advice on what quotations should be. During the war the C.D.T.A. dealers dealt as a group with the Department of Munitions and Supply, and Mr. Winters of Novocol in his evidence referred to this fact as an explanation of the action

described below, to prevent non-member competitors from tendering competitive bids. Clearly this is an inadequate explanation since the government department concerned had requested tenders from the non-member firms. Several instances of collusion on government tenders are cited.

Casgrain & Charbonneau were invited to tender in 1939 and informed Novocol to that effect. Novocol wrote instructing them at what price they must tender, and sent a copy of their letter to Mr. Lawrie. This letter, dated November 23, 1939, reads in part as follows:

"The quotation therefore *must* be \$281.40 in order that all dealers will have the same chance of securing this business.

It is distinctly understood that should a quotation be made at a price less than the above we reserve the right to decline filling the order." (Exhibit 212)

A parallel incident took place when Ingram & Bell, a surgical house which distributes Novocol products, wished to tender to the Government on hypodermic needles. Two telegrams were sent from the parent Novocol company to its subsidiary on June 26, 1940. One of these quoted prices for members of the C.D.T.A. but instructed that the quotation to Ingram & Bell be held. The second telegram is quoted:

"REGARDING INGRAM BELL NEEDLE QUOTATIONS ACT ACCORDING LAWRIES ADVISE STOP IMPORTANT TO PROTECT DENTAL DEALERS INTEREST ON GOVERNMENT BIDS STOP WILL BE IN TORONTO THIS SATURDAY MORNING CAN BE REACHED FRIDAY PALMER HOUSE CHICAGO IF NECESSARY."

(Exhibit 209)

On June 27, 1940, Novocol, Canada, reported to its parent company that it had acted in accordance with instructions and had quoted Ingram & Bell a "price slightly in excess of that for the Canadian Dental Trade Ass'n."

A third case is demonstrated by the following excerpts from the correspondence. The first is from a letter of May 5, 1942, from the parent company to Novocol, Canada:

"I am pleased to note that you have tendered a bid for 1200 x 100 Monocaine Anestubes to the Department of Munitions and Supply. The price you say was \$3.60. This is a lower price than we charged to the Canadian Dental Corps. What is the difference between the Department of Munitions and Supply and the Canadian Dental Corps. Furthermore, how will the Canadian Dental Trade Association profit by this arrangement. I am happy to note that this tender was rendered with the full knowledge of Don Lawrie so that no criticism will come from the C.D.T.A. Of course, I am very much interested to know whether we were awarded this bid."

The reply was sent on May 6, 1942:

"The Department of Munitions and Supply, more or less look for the best tender having regard to the goods they are buying, and on receipt of the invitation to tender I discussed the matter with Don Lawrie. We agreed to hold the reply off until the next day, when he wired from Montreal to submit the price of \$3.60 which is the same price as we sell to the Canadian Trade Ass'n." [Underlining reproduced from letter].

### 3. Equipment

The dental equipment which is listed in the price book includes dental chairs, dental units, X-ray machines, cabinets, sterilizers, lights and lathes. Certain types of smaller equipment or parts are treated as sundries.

Two Canadian firms, Equipment Manufacturing and National, have engaged in the manufacture of a limited range of equipment, the most important articles being chairs and units. Equipment Manufacturing, a wholly-owned subsidiary of Ash-Temple, has produced virtually all of this equipment and has marketed it through its parent company. Less than 3 per cent was sold to others in 1944. The output of National was negligible throughout the period for which figures were available, no dental chairs having been made since 1937 and only a few dental units.



In view of this the generalization may be made that there is no important production of dental equipment in Canada. The two Canadian companies have production facilities that could be greatly expanded if Canadian demand could be developed for the Canadian product. The evidence proves that no effort has been made to increase this demand, and that both Canadian companies prefer to push the higher-priced lines of the American manufacturers. Both companies produce lower-priced articles which are not competitive with the high-quality American equipment.

Equipment Manufacturing has been operated at times at a financial loss. Its principal, Ash-Temple, is a distributor of the Ritter Company Incorporated of Rochester, N.Y., and specializes in the sale of that company's equipment. Mr. H. G. Harris, vice-president of Ash-Temple, wrote Ritter on March 20, 1944:

"As you no doubt are quite aware, our factory has been operated not to compete with Ritter equipment but purely to augment Ritter equipment, by supplying lower priced equipment where price was a factor with the buyer. You may wonder why we shouldn't step up our own factory production and meet the present emergency, but this we feel would be a very short sighted policy as we have been trying for years to persuade dentists to buy the better quality of equipment which you manufacture and now for the first time since about 1929 they have the means and the inclination to buy Ritter rather than anything else."

The equipment sold by National is principally that of the Weber Dental Manufacturing Company of Canton, Ohio. Its own production during an eleven-year period ending in 1945 was so small that it indicates clearly a lack of interest in equipment manufacture. This is supported by the following quotation from a letter written by its president, Mr. William McTavish, to Mr. L. C. Gelinais on December 27, 1941:

"We ourselves, are making less and less equipment and fewer supplies all the time because we find that it pays us better to sell the products that have become standardized and are being advertised in the Journal from month to month."

The prices for Canadian-made chairs which are published in the price book differ as between the two manufacturers but, as pointed out above, National has made none of these chairs for many years and hence the price has no significance. Both firms charge exactly the same price, \$315 for the units they produce and their refinishing prices are common prices set by the Appraisal Committee. Refinishing is an important activity of both factories and Mr. McTavish referred to the National establishment as "a glorified repairing factory".

#### 4. Sundries

The Universal Price Book discloses that the prices of some of the sundries produced by rival manufacturers are identical. This results in most cases from the application of the price book formula to common American prices. In the United States catalogues, prices of most dental instruments made by Cleveland Dental and the S. S. White Company are the same. The correspondence shows other examples of identical prices and quantity rates, such as burs made by Ransom and Randolph and S. S. White; alloy, copper amalgam and cements made by Caulk and S. S. White; and inlay wax made by Kerr Dental and S. S. White. A number of letters from the American Caulk and S. S. White firms to their respective subsidiaries in Canada show that these prices on occasion have been the subject of discussion between the manufacturers and sometimes were made identical as a matter of company policy. All these firms are members of A.D.T.A.

In the Canadian industry the two subsidiaries of Caulk and S. S. White have on several occasions discussed the prices for certain of their sundries sold in Canada. This was admitted by the managing directors of both companies, each of whom stressed that this has not been a common practice and

has been confined to unusual situations. The documentary evidence discloses, however, that it has been done on important products and has resulted in price agreements between them and, on some occasions, between them and the dealer members. Both companies support the C.D.T.A. system by having their products listed in the price book, and by adopting the C.D.T.A. terms as part of their pricing policy.

The clearest example of price agreement between Caulk and S. S. White in Canada is shown by the history of their alloy prices. Prior to 1936 prices for True Dentalloy, made by S. S. White, and Twentieth Century alloy, made by Caulk, were different both in the United States and in Canada. In May, 1936, S. S. White, U.S., brought their prices into line with those of Caulk, U.S., after discussions between the executive officers of both companies. S. S. White, Canada, maintained the price differential which existed between the two products, however, which at this time was 15 cents per ounce lower than the competing line. In writing to his American principals on May 5, 1936, Mr. C. A. McKenna, managing director of S. S. White, Canada had this to say:

"...We have maintained the same ratio between our prices and those of 20th Century Alloy as prevailed before this change. The three dealers whom I consulted to-day felt that unless we maintained this price difference, we would be open to criticism for not making as great a reduction as our competitor."

Mr. W. T. Gouget, Vice-President of the parent company replied on May 8, 1936, in part as follows:

"Insofar as Canadian prices are concerned, this should be a matter for your decision, especially since True Dentalloy is manufactured in Canada as a wholly Canadian product. If there is no serious protest on the part of the Caulk Company and the principal dealers, we have no objection to your maintaining a price difference in regard to alloy, since you are entitled to any advantage that goes with home manufacture."

In May 1937, the Canadian subsidiary forwarded its prices of True Dentalloy to S. S. White, U.S., and received the following reply:

"... I presume that the True Dentalloy prices mentioned were instituted to conform with Caulk's prices. If this is so, I would appreciate having a list of Caulk's in order to make a comparison." (Exhibit 297)

Mr. McKenna replied that a ten cent differential below the Caulk prices was still in effect in Canada. To this the export manager of the parent company replied:

"I have yours of the 19th and note that True Dentalloy in Canada is 10c per ounce lower than the 20th Century Alloy and that differential is maintained on 1, 5, 10 and 20 oz. quantities.

As you probably know, our prices used to be lower in the U.S. and other parts of the world but at the time of the last price adjustment this company decided to change this policy and make it the same as 20th Century and it seems strange to us in the Export Department why Canada should be an exception to this policy. No one here seems to know just why your price of 10c lower was fixed.

I understand that you have an agreement with the dealers that this was a satisfactory price. But, as we do not fix prices in this manner I cannot exactly see the logic in this particular instance. No doubt our London and Paris houses could have reached an agreement with the dealers to have a lower price than Detrey's alloy, so will you be good enough to tell me how and why the 10c differential was fixed upon."

(Exhibit 299)

The Canadian firm continued to charge the lower price, however, until January 1940, when the managers of Caulk and S. S. White in Canada agreed upon the price. Mr. McKenna in his evidence stated that he was approached by Mr. Bailey, then managing director of Caulk, Canada, and that he had agreed that if Bailey reduced the price of Twentieth Century to meet that of True Dentalloy he would take no action to restore the differential. The understanding of Caulk, U.S., with regard to this arrangement is expressed in the following letter to its Canadian subsidiary, written on January 26, 1940:

"I had a call from Mr. Gouget on Thursday and he, in the course of conversation, mentioned the fact that the two of you had gotten together on alloy prices in Canada. He wanted to know if I knew of this, and I was happy that this had been accomplished.

I was tempted to suggest to Gouget that an equalization of prices on a scale upward, they making the change instead of ourselves, might have been more desirable and profitable, but I thought that in view of the fact that you had gotten together I would not make a statement that would alter the matter in any way."

The uniform prices on these alloys have been maintained. On March 22, 1946, both Canadian manufacturers circularized the trade withdrawing their wholesale and retail prices of alloy. Both circulars pointed out that they had exhausted the stocks of silver bought at a lower price and that the cost of silver had almost doubled. The price book shows that when prices were again established they were identical. The rise in the price of silver began when the control of the Wartime Prices and Trade Board was lifted on February 1, 1946, some two months earlier, and Mr. Lawrie admitted in evidence that he and Mr. McKenna had consulted each other with regard to their action on prices.

(Evidence, p. 698)

Direct price agreement between the same two manufacturers and the dealers is illustrated in the case of mercury, which was referred to in the section dealing with private brand merchandise. It will be recalled that agreement had prevailed whereby the dealers' price of private label mercury had been set at twenty-five cents per pound below those of L. D. Caulk and S. S. White. This agreement is further documented by telegrams from the Caulk files which were sent on June 20, 1940. The first of these telegrams was sent by Caulk, Canada, to its managing director, who was absent in the United States. It read:

"Mr. McKenna feels an increase in Mercury price to \$4.25 per lb. wholesale too drastic an increase at present. Dealers who put up Mercury under their own label have agreed on \$6.00 lb. retail. Mr. McKenna suggests our retail to be \$6.25 per lb. and \$3.75 lb. wholesale, which would maintain same differential. No orders are being taken at old prices despite several inquiries. Please advise us."

Mr. Bailey replied:

"Accept McKenna suggestion as to mercury price."

As soon as Mr. Bailey's reply was received Caulk, Canada, sent out a notice embodying the prices referred to in the telegrams.



## VIII. C.D.T.A. PRICING IN RELATION TO CUSTOMS DUTIES

The central device used by C.D.T.A. in its concerted policies to fix the prices of imported supplies is the price book formula. This formula has the effect of providing a non-competitive margin on each of the components of the dealers' costs, including duty, where applicable. Examination of Appendix III, which sets forth some of the more important tariff items applying to dental goods, shows that where they are subject to duty the typical rate is about 25 per cent. It has been noted that normally the agreed upon margin over cost decided upon by the C.D.T.A. members is 66⅔ per cent. Thus, on an item which enters at 25 per cent and costs the dealer \$4.00 in the United States, the Government collects \$1.00 in duty. This amount is of course recovered from the dealer's customer. The customer must pay in addition, however, another 66⅔ cents which the dealers have agreed to charge as one part of their margin. This margin could not be added if there were no duty, because the goods would be available in the United States at American retail prices.

At first sight it may not appear that a combination of dealers would be in a position to take advantage of the existence of a duty in the same way as a combination of manufacturers who might fix a common price at or slightly below the laid-down cost of a dutiable imported article. The elimination of competition by an agreement among dealers gives the same opportunity to use the duty to their own advantage by reason of the fact that the persons to whom the dealers sell are able to buy only at retail prices. If consumers sought to purchase directly in the United States, for example, they would have to pay the retail price there. This retail price would then become the basis on which duty and other taxes would be calculated. The laid-down cost would therefore equal or exceed the price fixed by agreement among the dealers. Thus an item which costs a dealer \$4.00 in the United States would have a retail price in that country of \$6.67. If it were subject to the common rate of duty of 25 per cent the following would be the relative situation on importation by a dealer and a consumer:

	Wholesale	Retail
U.S. price .....	\$4.00	\$6.67
Duty 25% .....	1.00	1.66
Duty paid .....	5.00	8.33
Sales tax 8% .....	.40	.67
	5.40	
Mark-up 66⅔% .....	3.60	
Retail price .....	9.00	9.00

This table shows that Canadian dealers add their formula margin to the duty without exceeding the price at which Canadian customers, buying at retail, could import directly.

Certain goods not made in Canada and designed for purely dental purposes are admitted into Canada duty free. Such a policy appears to be in line with that applied to many other goods for public health use and for scientific training and research. Many of the sundry products used in dentistry are classified under various items of the tariff and are used in many other industries. It would appear that action to reduce the tariff rates on such articles would present an insurmountable obstacle from an administrative point of view. This

consideration would not apply to such products as dental equipment. Manufacturing in this field is controlled in Canada by two of the leading dealer members. They have deliberately restricted their output in order to obtain higher dealer margins on imported American lines. It also would not apply to dental filling materials for use in the mouth (alloys, amalgams and cements). The manufacturers of these products, Caulk and S. S. White, have, under the price book system, adopted identical prices for these products. Although these two companies are listed as manufacturers in Canada, their production of dental goods in this country is exceedingly small. Caulk employs only one man in its manufacturing operations and a few women engaged in packaging. The S. S. White Company manufactures dental goods in Canada on an even smaller scale.

The case of dental equipment, to which reference was made in Section VII of this report, may be used for purposes of illustration, although in this case prices were determined by negotiation between the American manufacturer and the Canadian dealers, and not by automatic application of the price book formula. Canadian prices for American equipment were about one-third higher than American prices early in 1946. This is shown by a comparison of the retail prices of a few standard articles manufactured by the Ritter Company of Rochester, N.Y.:

	U.S.	Price Canada	Difference Per cent
Chairs, Motor, Model B.....	\$ 695	\$ 957	38
Units, Model E. Type 1.....	987	1,311	33
Units, Model E. Type 3.....	1,245	1,681	35

A breakdown of the cost of these articles shows that a large part of this higher price resulted from the Canadian customs duty. A typical example is shown in the following computation. The price of the chair mentioned above was f.o.b. Toronto and was subject to a 40 per cent discount to the dealer, which made his total laid-down cost approximately \$575 exclusive of sales tax. It is understood that this amount was made up as follows:

U.S. price .....	\$695 (U.S. funds)
—less 40% dealers' discount .....	278
	417
—less 2% cash discount .....	8
	409
Net basic cost .....	409 (U.S. funds)
—plus adverse exchange .....	43
	452 (Cdn. funds)
—plus duty 25% .....	113
—plus incoming transportation (2%) .....	9
Net cost, excluding sales tax .....	\$574

Sales tax amounted to \$45.92 (8 per cent of \$574) so that the Canadian dealer's total cost was approximately \$620; his selling price was \$957, representing a mark-up of approximately 54 per cent on cost. The amount directly attributable to duty which was included in the final price was \$113 to which the dealer added his margin of 54 per cent. Thus the duty on this article profited the dealer to the extent of \$61, and resulted in a total increase of \$174 in the consumers' price. Put in another way, had there been no duty the selling price in Canada of a model B motor chair would have been \$783 instead of \$957; the spread between the Canadian price and the basic cost of \$409 in the United States would have been 91 per cent instead of the 134 per cent which was charged.

In the light of these conditions it could not be expected that the dental trade would take the initiative in advocating lower tariffs. The professional associations of dentists, however, have protested on several occasions against Canadian prices being so much higher than American prices. In a recent letter we have received from the Canadian Dental Association, the national society,

it was pointed out that this body had investigated prices during the war and found that Canadian prices were 50 per cent higher than those in the United States. It felt that the Canadian market was not large enough to sustain dental manufacturing plants and that although a small quantity of dental goods was being produced here, the present tariff rates were not justified.

The continuance of the customs tariff on these goods has facilitated the agreement among C.D.T.A. dealers to make additional charges on the scale shown in this report. The higher the rate of duty, the greater the actual additions to dealer margins. In a trade in which competition is active and freedom of entry is not restricted, it is hard to believe that such additional margins could be secured. In the dental trade, however, the agreement to maintain prices, the existence of the price formula, and the withholding of supplies from dealers who are not members of the C.D.T.A. prevent such competition. By these measures Canadian buyers are deprived of their normal safeguard against excessive prices.

The customs duty also serves to render more difficult the efforts of independent dealers to introduce non-controlled lines of supplies by reason of the additional expenses which the customs duties entail. In an address stated to have been delivered before a meeting of A.D.T.A. in Chicago in 1939, Mr. P. N. Alexander said:

"We have with us [in Canada] the carpet bagger and non-association dealer, but not, I believe, in as large numbers as over here—the duties established by our government being helpful to us in this instance, making it awkward for them to bring in materials, and to take out materials that they have not been able to sell."

(Exhibit 280)

The elimination or substantial reduction of the duty would not only affect the unearned increment which results from the operation of the formula system of pricing followed by C.D.T.A. members; it presumably would make more accessible to all members of the trade, association members and non-members, sources of supply from other manufacturers outside Canada. It would thus provide opportunity for more active competition amongst manufacturers as well as amongst dealers.



## IX. DENTAL ACRYLICS

In recent years vulcanized rubber and other materials used to form the denture base for sets of artificial teeth have been largely replaced by plastics of methyl methacrylate. This material is probably most widely known under the name Plexiglas, which has been used extensively for transparent surfaces of military aircraft, but it has other uses in many diverse fields. About 1936 Vernon-Benshoff Company, a dental firm in Pittsburgh, U.S.A., began to experiment with methyl methacrylate produced by Rohm and Haas Company of Philadelphia in the manufacture of denture bases. Rohm and Haas supplied a powder (polymer) and a liquid (monomer) which Vernon-Benshoff mixed with a colouring pigment to produce a rubbery slab which was suitably packaged and supplied to dentists. This material could then be moulded in an ordinary plastic mould to form a denture plate. By 1938 Vernon-Benshoff was producing on a commercial scale and its success in marketing the plastic dental blank attracted other firms to the new product. Some of these found that a more suitable method for dental use consisted in supplying the powder and liquid in separate containers so that the dentist or dental technician could mix the materials as required. This method proved more satisfactory to many dentists as the plastic blanks had a tendency to dry out.

During this period the E. I. du Pont de Nemours and Company, which had a cross-licensing arrangement in this field with Rohm and Haas, had been working with the L. D. Caulk Company of Milford, Delaware, to develop a methyl methacrylate material for dental use. Attention had apparently been given first to an injection moulding method developed by Imperial Chemical Industries of England with whom du Pont has reciprocal arrangements.<sup>1</sup> However, in view of the simplicity of the method developed by Vernon-Benshoff, emphasis was shifted in that direction. All the patents affecting the use of methyl methacrylate controlled by du Pont were not covered by the existing arrangements with Rohm and Haas; this was the case with respect to certain Strain patents which were not issued until 1937 and 1938. In order to protect its patent position du Pont apparently considered that it would be necessary to prevent the sale of denture material in the powder and liquid form and to control the manufacture and sale of the plastic blanks under licence. In 1939 a further licence agreement was made with Rohm and Haas under which du Pont granted Rohm and Haas a royalty-free licence under the Strain (du Pont) and Tidd (ICI) patents with a right to grant sub-licences for dental use to Vernon-Benshoff and Detroit Dental, the latter having been one of the dental firms which had introduced the sale of powder and liquid to the dental profession. As a prior step to this agreement Rohm and Haas had entered into agreements with Vernon-Benshoff and Detroit Dental under which Rohm and Haas reserved the right to determine the sales policy, sales price and all advertising relating to the denture material. Although no price provisions were inserted in the agreements between du Pont and Rohm and Haas there was a mutual understanding that Rohm and Haas would follow the prices set by du Pont.

When Vernon-Benshoff first began the distribution of their plastic blanks for dentures a retail price of \$4 per blank had been set. According to information presented to the Committee on Patents of the U.S. Senate in 1942, the cost of manufacture of these blanks weighing roughly one ounce, was about 30 cents in

<sup>1</sup> Canada and International Cartels. Report of Commissioner, Combines Investigation Act, Ottawa, October 10, 1945, p. 19.

1938. The following extract is taken from a memorandum of May 6, 1938, made by an official of the du Pont company following a discussion with a representative of Vernon-Benshoff, which was filed as an exhibit in the congressional hearings:

"Mr. Vernon stated that his cost of making Vernonite dentures, based on the average polymer-monomer price of \$1.25 per pound, was 30 cents each. We therefore established 30 cents as a manufacturing cost. Of course, we did not tell Mr. Vernon that we could manufacture and package them at a cost of approximately 15 cents.

We therefore believe that there would be a margin of from \$2 to \$2.20 to cover promotion work, selling expenses, advertising, and profit. Promotion and sales expenses would probably amount to 50 cents per blank, leaving a profit of \$1.50 to \$1.70 to be distributed between the dental supply houses and ourselves."<sup>1</sup>

The monopolization of this lucrative market required that the independent dental firms who were selling powder and liquid at prices ranging from 50 cents to \$2.75 a unit (equivalent to one blank) be deprived of their sources of supply of materials. It was not possible to prevent them from getting powder, as this was available for other commercial uses, but du Pont and Rohm and Haas refused to sell the liquid (monomer) for dental purposes other than to Caulk, Vernon-Benshoff and Detroit Dental. The latter company was required to cease selling powder and liquid, which led to objections from dentists who had found that the mixing of the materials in their own laboratories was more satisfactory. In view of the criticism of the dental profession du Pont agreed in 1940 to permit the sale of powder and liquid for dental use. The following prices were then put into effect by Rohm and Haas and similar resale prices were said to have been established by Caulk in its sale of Lucitone. The prices set by Rohm and Haas applied to sales of Vernonite by Vernon-Benshoff and Crystolex by Kerr Dental, successor to Detroit Dental.

#### PRICE PER UNIT OF POWDER AND LIQUID

Quantity	To Dental Manufacturer	To Dental Dealer	To Dentist
1 to 9 units*	\$1.00	\$2.40	\$3.60
10 and over	.90	2.25	3.25

\* A unit weighs from 27 to 33 grams (about 1 oz.) and contains enough material to make a full denture base.

It has been necessary to devote attention to developments in the United States because no methyl methacrylate for dental purposes has been manufactured in Canada, all materials being imported from the United States, and because the pricing policy followed in Canada has been along the same lines as in the United States. Retail prices in both countries have been about the same.

Canadian Industries Limited through its licensing agreements with its principal shareholders, du Pont and ICI, held in Canada similar patent rights to those possessed by du Pont in the United States. The Vernon-Benshoff Company had appointed Denco as its exclusive distributors in Canada for Vernonite as early as 1938. Du Pont had given Caulk, U.S.A., the exclusive distribution of Lucitone in the United States and when the product was introduced into Canada in March, 1939, CIL selected Caulk, Canada, as its exclusive distributor. Competitive materials produced by outside manufacturers were apparently already being sold in Canada, according to a letter of September 28, 1939, from Mr. J. F. Armitage, manager of the plastics division of CIL, to Caulk, Canada:

<sup>1</sup> Hearings before the Committee on Patents, United States Senate, Seventy-Seventh Congress, Second Session on S. 2303, Part 2, pages 842-843.

"I expect to leave for Arlington next Tuesday night and on Thursday to discuss with Rohm & Haas the matter of granting the licence, and they in turn to sub-licence 'Vernonite' and 'Crystolex'.

One of the conditions of this licence is that their price structure will be similar to ours, and I would like to know for my general information if you intend to continue selling 'Lucitone' at the present price of \$4 to dentists, and \$3.75 to dental laboratories, this in view of the exchange situation.

I would also like to know what the present retail prices are for 'Vernonite' and 'Crystolex', and have already learned from Mr. Pearson regarding prices on other competitive materials.

Mr. Pearson gave me a very complete report of how you are progressing on 'Lucitone' and as a consequence of this report, I will take up with Mr. Perry regarding the possibility of your Company switching to 'Lucitone' in the powder liquid form as an alternative to its present plastic form.

You may be interested to know that we see a very much better chance of taking action against both the American exporters and the Canadian importers of materials that we consider are infringing our patents, and it is quite possible that in the very near future we will go after this situation very strongly.

As a matter of fact, I have no objection whatsoever to your informing Mr. Temple of this possibility so that he may decide not to start Rx-39 in view of the strong possibility that its sales in Canada will be stopped."

The licence agreement between CIL and Rohm and Haas, filed as an exhibit in the Congressional hearings already referred to, is dated June 5, 1940. Under its terms CIL granted Rohm and Haas a non-exclusive licence under certain Canadian patents to sell through Vernon-Benshoff and Kerr Dental moulding mixtures for dental use with the right to sub-licence the two distributors. The agreement provided that the sale of such mixtures should carry an implied right to the purchasers to mould the mixtures into dentures under the patent claims. It was specifically provided that neither Rohm and Haas nor the distributors would have any right to manufacture or mould the mixtures in Canada. Rohm and Haas was to pay CIL a royalty equal to one-half the difference between its factory cost and unit selling price to its distributors on patented materials exported to Canada. For the purpose of calculating the royalty the factory cost in any event was to be deemed to be not in excess of 25 cents per denture unit. The distributors, Kerr Dental and Vernon-Benshoff, were to pay CIL a royalty of 40 cents for each denture unit sold by them in Canada from April 18, 1939 to the date of this agreement. The agreement did not contain any specific provision relating to resale prices but, as in the United States, the unit retail prices in Canada of Lucitone, Vernonite and Crystolex have been kept at the same level.

CIL had already proceeded to take steps to stop what it considered the sale of unauthorized acrylic products. On March 11, 1940, it sent the following letter to Dental Products Corporation, an independent dental dealer in Toronto, and a copy to Caulk, Canada:

"We believe that you, as a reputable firm, would not willingly or knowingly, infringe on rights that belong to another firm.

Having been advised that you are the distributors in Canada for 'Dentone', used in the manufacture of dentures, may we call to your attention that we consider that the use of this material, and aid given in its use for this purpose (such as making, selling and servicing this material) without authority from us, constitutes infringement of Patents No. 380,819 and/or No. 364,799 granted to us by the Canadian Patent Office.

We are sure you will give this matter your immediate attention and will look forward to an early reply on the subject."

The policy followed in distributing Lucitone, Vernonite and Crystolex in Canada is indicated in a letter of August 13, 1941, from Caulk, Canada, to Caulk, U.S.A.:

"In reply to your letter of August 11, there are no dealers in Canada handling Vernonite and Crystolex, who are not also handling Lucitone. Vernonite and Crystolex are only handled by the seven Association dealers here."

CIL has disclaimed any control over the resale prices of Lucitone, Vernonite and Crystolex or over the policy of Caulk, Canada in the selection of Lucitone



dealers. Denco has acted as the exclusive importer of Vernonite, supplying other members of C.D.T.A. with their requirements. Crystolex has apparently had a very small sale in Canada and presumably has been imported by dealers directly. Caulk, Canada has had the exclusive distribution of Lucitone to other members of C.D.T.A. Lucitone in plastic blanks and in powder and liquid has been made at du Pont's plant in Arlington, N.J. The plastic blanks have been billed f.o.b. Arlington to Caulk, Canada, by CIL, but powder and liquid have been repackaged by CIL at Brownsburg, P.Q.

When Lucitone was first introduced to Canada by Caulk in 1939 in the form of the plastic blank the laid down cost and selling prices<sup>1</sup> were as follows:

Single unit blank

Cost delivered Caulk, Toronto .....	\$1.31
Price to dealer .....	2.40
Price to dentist .....	4.00
Price to technician .....	3.75

It will be noted that this schedule of pricing gave Caulk as the distributing agent a spread of more than 80 per cent on cost, while the dealers were given the formula margin of 66 $\frac{2}{3}$  per cent on cost on sales to dentists and 56 per cent on sales to technicians.

In February, 1940 the following schedule applied to the sale of plastic blanks:

Single unit blank

Cost delivered Caulk, Toronto .....	\$1.31
Price to dealer (25 or more units—\$2.25) .....	2.40
Price to dentist .....	3.60
Price to technician .....	3.38

Caulk's margin on cost on multiple sales would then have been 71.7 per cent, while on the same basis the dealer's margin would have been 60 per cent in selling to dentists and 50 per cent in selling to technicians.

At this time the sale of Lucitone in powder and liquid form was introduced by Caulk and as a greater volume of sales has since consisted of 10 unit packages in this form the trend of prices for this package may be examined.

Ten unit package, powder-liquid, 1940

Cost delivered Caulk, Toronto .....	\$13.46
Price to dealer .....	22.00
Price to dentist .....	35.20
Price to technician .....	33.00

At this time Caulk had a spread of 63.4 per cent on cost or a percentage even greater than the dealer, whose margin was 60 per cent on sales to dentists.

In spite of the efforts of du Pont and Rohm and Haas in the United States and CIL in Canada, unlicensed manufacturers of dental acrylics continued to offer products at prices well below those of the licensed goods and to find some market for them in Canada. After 1941 no further action appears to have been taken by CIL to draw attention to possible infringement of its patents. In October, 1942 CIL took steps to cancel the agreement made in 1940 with Rohm and Haas and to relieve the latter company from the payment of further royalties. The following references from the records of various C.D.T.A. members indicate the attitude taken with respect to the sale of Lucitone and Vernonite in relation to other acrylics. In a letter of January 13, 1941, the Vancouver manager of Ash-Temple wrote to Mr. H. P. Temple:

"... However, I realize that in territories, where cheaper products have already been introduced, it is going to be most difficult to upset them again. But, there is a moral in this letter, that I think is very potent, and that is that all dealers, will be smart to get together on things of this kind, when they first appear on a territory, and fight to maintain this sale of the better standard product.

<sup>1</sup> It may be noted that Caulk allows 2 per cent cash discount to dealers while the latter allow 2 per cent cash discount to dentists and 4 per cent to technicians.

"We are still maintaining the situation here in British Columbia, and the cheaper materials are certainly not making any inroads here."

Four years later the President of B.C. Dental wrote to National Refining in a letter dated December 3, 1945:

"So far, we have not sold one single bottle or package of any material other than the standard brands, such as Lucitone, Vernonite, etc. I understand that this Densene is very good but while I wouldn't care to say that we wouldn't change our minds later on should the occasion arise, we would not feel justified under our present arrangement to do so. However, I can't say when we might do so."

On October 23, 1941, the president of Ash-Temple wrote to one of the district offices of the company:

"Mr. Harris gave me the list of the men to whom you want 'The Opalex Technician' sent, but I am just wondering if you have included in that list the names of any men who are using Lucitone. Under no circumstances do we wish to send 'The Opalex Technician' or any other information to that type of man. We only want to send 'The Opalex Technician' to those men who have purchased Opalex or who are using other cheap materials and who could possibly be switched to Opalex. I am returning the list to you and I wish you would check this over. If you have included any names of men who are using Lucitone, please scratch them out."

The same attitude was expressed by National Refining in a letter of January 10, 1944 to Cosmos Dental Products, Inc. of New York:

"We would not undertake to disturb one Lucitone or Vernonite user of acrylics."

Maritime Dental in writing to National Refining on June 15, 1944 said:

"Our policy has been to always sell Lucitone or Vernonite wherever possible. . . ."

The wide disparity between the price of the licensed and unlicensed acrylics was the subject of a letter dated July 18, 1941, from Dr. Henry A. Thompson of Denco to Vernon-Benshoff which contained the following:

"Frankly, we have been offered an acrylic in a very satisfactory colour, with powder and liquid very nicely packaged, for \$4.50 per lb., or supplying it in clear crystal form, colouring it ourselves, and making up the monomer, at a cost of 85 cents per lb.

All this makes us wonder if we are not party to exploiting the dental profession by selling them standard acrylics at the high prices that prevail."

However, no changes were made in the prices of the licensed products in Canada until May, 1942, when the following schedule applied to Lucitone:

Ten unit package, powder-liquid, 1942

Cost delivered, Caulk, Toronto .....	\$8.55
Price to dealer .....	13.50
Price to dentist .....	22.50
Price to technician .....	21.00

Caulk's spread on this package was 57.9 per cent on cost while the dealer again secured the formula margin of 66 $\frac{2}{3}$  per cent on cost in selling to dentists.

Even this reduction in price left the licensed products far above the manufacturing cost as it had been originally estimated and far above those acrylics not subject to patent control. On May 11, 1942, Mr. J. K. Laird of Ash-Temple wrote to Fricke and Getz Dental Mfg. Company of Chicago:

"We have discussed with Mr. Harris and other members of the organization, the possibility of adding your Acrylic line to our stock.

At the present time, the Acrylic situation in Canada is in a completely chaotic state, materials ranging in price from \$4.50 per pound to \$30 per pound to the Laboratories. We are in hopes that this situation will right itself, but at the present time do not want to become involved in some of the repercussions that are sure to follow, and have to, therefore, regretfully advise at this time that we have decided not to handle your product."

No further changes in prices were made until 1944 when Kerr Dental Company, which apparently had never been too happy about the scale of prices required by Rohm and Haas, announced a substantially lower scale of prices

to dentists in Canada, \$22.50 for a 15-unit package as against the prevailing price of \$22.50 for a 10-unit package. This was indicated in a letter of March 7, 1944, from Denco to Vernon-Benshoff:

"The Kerr Dental Mfg. Company has just announced the following new Canadian prices of Crystolex—

1-unit package .....	\$ 1.80
15-unit package .....	22.50
rate on 45 units .....	62.50
rate on 150 units .....	180.00"

Common action was immediately considered by Caulk and Denco as reported by Mr. M. E. Bower of Denco to Vernon-Benshoff on March 27, 1944:

"We are having a meeting today with Don Lawrie of the L. D. Caulk Company and will advise you just as soon as a definite Canadian list price has been established."

A new schedule of prices, established by Caulk in March, 1944, gave the following cost and prices on the ten-unit package:

Cost delivered Caulk, Toronto .....	\$ 5.27
Price to dealer .....	9.00
Price to dentist .....	15.50
Price to technician .....	14.00

At this time Caulk had a spread of 70.7 per cent on cost and the dealer had a margin of 72.2 per cent on cost in selling to dentists. Although Caulk made no changes in its resale prices between May, 1942, and March, 1944, the cost of Lucitone had been reduced in the interval as shown by the following:

#### COST AND SELLING PRICES OF LUCITONE TEN UNIT PACKAGE, POWDER-LIQUID

—	Cost to Caulk, Toronto	Price to Dealer	Price to Dentist	Price to Technician
February, 1942.....	\$13.46	\$22.00	\$35.20	\$33.00
May, 1942.....	8.55	13.50	22.50	21.00
October, 1943.....	7.50	13.50	22.50	21.00
March, 1944.....	5.27	9.00	15.50	14.00

The following table sets forth the identical dealer and retail prices for Lucitone and Vernonite adopted in 1944, which have remained in effect since that time.

#### CURRENT PRICES OF LUCITONE AND VERNONITE

—	Price to Dealer	Price to Dentist	Per cent on Cost	Price to Technician	Per cent on Cost
Single unit Plastic.....	\$ .99	\$1.80	81.8	\$1.80	81.8
10 units.....		15.50		14.00	
Single unit Powder Liquid.....	1.08	1.80	66.7	1.80	66.7
10 unit Powder Liquid.....	9.00	15.50	72.2	14.00	55.5
10 unit Powder.....	6.00	10.35	72.5	10.35	72.5
10 unit Liquid.....	3.00	5.15	71.7	5.15	71.7

When the new prices for Lucitone were issued in 1944 Caulk, Canada, sent out the following notice dated March 31, 1944:

#### "TO THE CANADIAN DENTAL TRADE

Probably the most important subject on your mind today is 'what's ahead for acrylics'.

Unquestionably, the acrylic market is definitely improving. More and more laboratories over the country are awakening every day to the genuine economy of using Lucitone, despite the price-war being waged constantly by the distributors of commercial acrylics.



Dealers have reported that sale of the licensed acrylics had reached a very substantial volume ranging from 9 per cent to 16 per cent of their total sundry sales. This was vitally important business to be protected, carefully—not to be tossed about without due consideration to all of the many related factors involved.

As you know, the marketing situation changed suddenly. In order that you would not be handicapped in your sale of Lucitone we set about, very deliberately, to plan not only for your immediate business but for the future as well to establish safeguards against unprofitable transactions for you and us.

The enclosed prices are now in effect on Lucitone and we ask a continuation of the support you have so generously given us in the past."

From the time of its introduction in 1939 to the end of 1946, purchase cost of Lucitone by Caulk, Canada amounted to \$351,000, while total sales for the same period were \$566,800. The difference between these two totals is \$215,800 and is 61 per cent of the cost of purchases. The value of sales by Caulk, Canada, apart from sales to the Government, represents the cost of Lucitone to the dealers, who have enjoyed a margin on cost ranging from 55 to more than 80 per cent. Priced at retail the Lucitone purchased by Caulk, Canada for \$351,000 would have been sold for more than \$800,000 for the period. Similar information for purchases and sales of Vernonite has not been available, but it is estimated that unit sales of Vernonite have been approximately half those of Lucitone. On such sales Denco has not had as wide a margin on Vernonite as Caulk, Canada, has on Lucitone, but dealer margins have been about the same.

Information furnished on behalf of Caulk, Canada, indicates that the company is responsible for the sales promotion, advertising and distribution of Lucitone in Canada and also for the successful use of the material by dentists and technicians. In the latter connection it is stated that field representatives are employed to make available to the dental profession the results of research conducted by the parent American company. The statement on behalf of the company concludes: "The cost of advertising 'Lucitone' to the dental population of Canada would be prohibitive if the creative advertising done by its parent company at Milford were not available to the L. D. Caulk Company of Canada Limited." With regard to Vernonite it was stated that "The Dental Company of Canada Limited is responsible for sales promotion in Canada and the expenses incidental thereto such as advertising, Technique Bulletins to dentists and laboratories, distribution and absorption of units used for demonstration."

The Crystolex situation is again referred to in a letter of May 4, 1944, a month after the new prices had been put into effect. Mr. M. E. Bower of Denco wrote to Denco (Western):

"The Crystolex situation in Canada was studied very carefully before Vernonite and Lucitone prices were established. The Ash-Temple Co. as well as all other dealers expressed themselves firmly as being in favour only of promoting the sale of Lucitone and Vernonite.

This is similar to the practice they have followed in the past and to date, as mentioned before, the sale of Crystolex in Canada is practically nil . . .

The Caulk Company, other dental dealers, as well as ourselves, are not of the opinion Crystolex will interfere with the sale of Vernonite and Lucitone under the present arrangements. These opinions, of course, can be wrong but in the meantime the prices will be maintained and your report from time to time as to the acrylic resin situation on your territory will be of great assistance for we cannot afford to allow Crystolex to interfere with Vernonite sales."

The sheet in the Universal Price Book on which Crystolex is listed is dated April 3, 1944 and carries the following prices:

Powder and liquid	
Single unit	\$ 1.80
15-unit	22.50

No prices are shown for 45 units or 150 units to which reference had been made in Denco's letter of March 7 quoted above.

Another acrylic, Justi Tone, is referred to in a letter dated August 18, 1944 from Mr. Bower of Denco to Denco (Eastern):

"Our attitude, and I sincerely hope the attitude of all our good people throughout our organization, is not to promote the sale of Justi Tone. As a matter of fact, to date we have only supplied this material for orders received through the Justi representative and in each case this is ordered direct from the manufacturers.

Prior to the announcement of the Canadian price for Justi Tone, which incidentally was announced by the C.D.T.A., full assurance was obtained from all dealers here in Toronto that they would not go out to sell the product but merely meet the demand, if any, created by the manufacturers."

Still another line of dental acrylics has been sold by S. S. White, Canada, under its own name. This was referred to by Mr. J. D. Pickup in his argument at the conclusion of the hearings. (Evidence, p. 1760). The prices of this product are not entered in the Universal Price Book. The one-unit price of the S. S. White product was lower than that of Lucitone, but the ten-unit prices were the same:

Powder and liquid	S. S. White	Lucitone
1 unit .....	\$ 1.60	\$ 1.80
10 unit—dentist .....	15.50	15.50
10 unit—technician .....	14.00	14.00

Lucitone in powder-liquid form was supplied by Caulk, Canada, for use in the Canadian Dental Corps, beginning in 1941. At first sales were made at the same price as to dealers, namely \$2.25 per unit. Following reductions in cost of materials supplied for Army use Caulk, Canada, reduced their price to \$1.30 per unit in February, 1942 and \$1.04 in July, 1942.

In the fall of 1942, Caulk, Canada, received information that members of the Canadian Dental Corps had become aware that an acrylic material was being made in England by Imperial Chemical Industries Limited and sold under the trade name "Kallodent". This information was referred to CIL on September 3, 1942, as follows:

"I understand that some samples of Kallodent made by Imperial Chemicals Ltd., of London, and bearing trade mark 222 have been received by the Canadian Dental Corps in Canada from England. I do not know what the trade mark situation is, but I thought you would be interested in knowing someone in England has sent samples of this material to the C.D.C.

The information was received by me from Mr. Bower of the Dental Company of Canada Ltd., who expressed grave concern over the possibility of the Dental Corps might conceivably use Kallodent instead of either Vernonite or Lucitone. I did not indicate to him the size of the order that we are holding for Dental Corps requirements. Possibly had he known that this order was placed he would not have been concerned over Kallodent."

In its reply of September 8, 1942, CIL stated:

"We cabled Imperial Chemical Industries regarding the samples of 'Kallodent' that had been received by the Canadian Dental Corps and received a cabled reply to the effect that they had not authorized such and would like further details.

If you have any knowledge of who sent these samples, or if you could find out within a short time, I wish you would let me have this information, and I will pass it on to I.C.I.

A suggestion was made by Mr. Henden that the buyer who had ordered the 'Lucitone' for the Canadian Dental Corps from us, may have come across 'Kallodent' 222 in England, and arranged for samples to be sent.

The prices on 'Kallodent' were recently rather drastically reduced, and as a consequence this material could be laid down in Canada for a much lower figure than for what the Canadian Dental Association is selling to the Dental Corps.

There is a distinct possibility that the order for 'Lucitone' will be cancelled if 'Kallodent' 222 is found to be satisfactory and much cheaper."

Caulk, Canada, later reported on the matter to its parent company in a letter dated September 15, 1942:

"A rather serious situation has developed here unofficially (*sic*) with Kallodent made by I.C.I. of England.

Colonel Lott, Director of Dental Services, has been overseas since last February and he has apparently sent samples of Kallodent to various technicians here in Canada for test purposes. The idea being that if the material proved to be satisfactory that the Canadian Dental Corps will adopt its use the same as the British Army have in Britain.

When I received the first information on this point I took the matter up with Mr. Armitage and Mr. Hendon of C.I.L., Montreal, and they cabled I.C.I. but I.C.I. replied stating that they did not know of any samples being sent to Canada and asked for further particulars.

I have just learned this morning from Mr. Hendon that Kallodent is exactly the same as Lucitone, the only difference being that in England the jobbers pay .60c per unit and the consumer pays .90c per unit. C.I.L. own the patents for Canada but at the same time if the Canadian Government demanded Kallodent it would have to be supplied to them. You understand the patent situation better than I do.

I am going to Montreal next week and will meet Mr. Hendon and Mr. Armitage to discuss this situation with them and I will report fully to you on my return.

At the moment it would appear advisable to supply the Canadian Dental Corps with Lucitone at the same price as Kallodent rather than have a demand created for Kallodent which would ruin (*sic*) our Lucitone market after the war. If the C.I.L. is forced to put Kallodent on the Canadian market I have asked them to appoint us as their distributor. Of course no official promises could be made in this connection but the suggestion was favourably received. I sincerely (*sic*) hope that some satisfactory arrangement protecting the rights of our Company here can be made."

Mr. Lawrie of the Canadian company was then informed by his American principals of their understanding that Kallodent was not based on the same formula as Lucitone, and to this he replied on October 5, 1942:

"I am particularly glad that this material is not Lucitone. When I was in Montreal last, Mr. Armitage stated, that it was quite true Kallodent was not exactly the same as Lucitone, but was extremely close."

In November, 1943 Caulk, Canada, reduced its price of Lucitone for use in the Canadian Dental Corps to 60c which, it may be noted, is the same figure as that given for the wholesale price of Kallodent in the letter of September 15, 1942. In the following year CIL provided Caulk, Canada, with a special pack of 10 units at a laid down cost of \$3.41 which was sold at a price of \$3.80. Since that time Caulk, Canada, has furnished on government purchases special 10 unit packs at a price of \$4.00 for which its laid down cost has been \$3.16.

Kallodent has continued to be sold in England for use in making dentures. Information secured in this inquiry indicates that Kallodent is supplied in packages containing 8 oz. of powder and 7 oz. of liquid for which the retail price is £1. The following comparison may be made of the relative size and prices of Kallodent and Lucitone.

	Kallodent 1 lb. package	Lucitone 10 unit package
Powder .....	224 grams (8 oz.)	230 grams
Liquid .....	196 grams (7 oz.)	105 grams
Retail Price .....	£1 or \$4.03	to dentists ..... \$15.50 to technicians ..... 14.00

While Kallodent may not possess the identical properties of either Lucitone or Vernonite it is evident that differences in manufacturing processes could not account for the fact that the price of a similar article in Canada is several times greater than in England.



## X. SUPPRESSION OF COMPETITION

The price book system, as described in foregoing sections, has resulted in the virtual elimination of price competition in the sale of dental goods throughout Canada. The basic agreement to maintain the prices in the Universal Price Book has been reinforced by periodic agreements to adopt terms and discounts and by special efforts which some of these companies have made to ensure that their branches in the East and in the West abide by these agreements. Concerted action has also been taken to prevent other forms of indirect price competition such as the sale of premium goods and the introduction of special contract offers; and to withhold higher discounts for quantity purchases which have been in effect in the United States.

An assessment of the success of the system and of some of its objects is found in the presidential reports of Mr. H. P. Temple to the annual C.D.T.A. meetings of 1936 and 1938. In addressing the annual meeting on March 20, 1936, Mr. Temple said:

"I believe the prices in our price book are adhered to in the majority of cases, but here and there concessions are made for quantity sales." (Exhibit 26)

At the annual meeting of February 25, 1938, Mr. Temple made the following comment in his presidential address:

"Our association has put many thousands of dollars into the pockets of every retail member and I have no hesitation in saying that if the Association disbanded, it would be a great calamity for every dealer here.

For instance, do you realize the value of the universal price list which is placed in the hands of everyone of your salesmen. What a chaotic condition the dental business in Canada would be in if we did not have that universal price list and if every house was left to its own devices to issue and prepare its own particular price list.

Even if we all agreed to use the same system for calculating prices, you know and I know that there would be a great variation in prices.

In spite of the fact that we seem to have drifted apart during the past couple of years, I believe the great majority of the sales made daily over the counter are charged out at correct prices according to the price book and that infractions in prices only occur on a few items such as alloy, anaesthetic, teeth and a few other items sold at quantity rates." (Exhibit 34)

The sale of dental goods by association dealers in the maritime provinces is largely confined to Maritime Dental and Denco (Eastern). The latter firm maintains a resident salesman in Moncton, N.B. With the approval of Maritime Dental, it keeps a small stock there, although it is not registered with A.D.T.A. as a branch. Relations between the two companies are very co-operative, and price competition does not exist.

The extent to which prices have been under control in the Maritimes is indicated in a letter from Maritime Dental to Mr. J. K. Laird dated May 10, 1943:

"Thank you very much for your thoughtfulness in writing us *re* price book. We will not trouble you to put any controlled lines in the price book for us. Our reason for so deciding is any lines we had which merited special mention in the price book, were lines we bought in Europe and of course they are off the market for the duration, at least. We have endeavoured and intend to continue to endeavour to confine our sales as much as possible to standard merchandise which already appears in the price book. As you know, the only direct competition we receive in Canada from members of the Dental Trade Association is from the Dental Company of Canada. We have a very excellent working understanding with these people and find the price book as published previously very adequate to insure uniformity of prices. The writer however, much appreciates your thoughtfulness in writing us and looks forward to your good assistance in settling any question which might enter our mind in connection with the new price book." (Exhibit 187)

In only one instance in the available records was the question of price cutting raised between the two firms operating in the Maritimes. This arose from a protest to Maritime by a Nova Scotia dentist that he had purchased a shipment of Plastogum from Denco at a lower price than that extended by Maritime. Denco checked their records in Montreal and Toronto and were able to report to Maritime that the only sale made to this dentist had been at the established price.

In the prairie provinces the business done by C.D.T.A. members is largely shared between Ash-Temple and Denco, who maintain retail branches or subsidiaries in the principal centres. These two firms have issued strict instructions to their local representatives to adhere to the price book, and have instructed them to consult their competitors in order to eliminate price-cutting. Their senior executives in the East have taken a personal part in such negotiations.

On April 11, 1940, Mr. Wilfrid Cracknell of Denco (Western) wrote to Dr. H. A. Thompson about a prospective equipment order on which he claimed he had been under-quoted by Mr. Fred Dodds, the Winnipeg manager of Ash-Temple. Dr. Thompson wrote to Mr. D. Johnston, the general manager of Denco (Western) expressing his belief that Mr. Dodds had made an honest mistake and would rectify it when it was pointed out to him. He stated that the prices on page 12 of the price book must be adhered to, and instructed Mr. Cracknell to get in touch with Mr. Dodds. Twice during this correspondence Dr. Thompson referred explicitly to the nature of the arrangements between Ash-Temple and Denco. In his letter to Mr. Johnston, dated April 12, 1940, he said:

"Dodds informed me while in Winnipeg that he would cooperate to eliminate price cutting in your territory, and would not take advantage of confidences entrusted to him to antagonize our customers. I have every confidence that he will keep his word."

Again, in a letter to Mr. Paul Gouin, Denco (Western) manager at Saskatoon, Dr. Thompson stated:

"Apparently Mr. Dodds made a mistake in quoting the \$845 without mentioning the 5 per cent surcharge. I know Mr. Dodds quite well personally and I feel confident that he will keep his word to cooperate with our people to eliminate this pernicious practice of price cutting."  
(Exhibit 251)

Ash-Temple's attitude toward maintenance of its price agreement with Denco is clearly indicated in an exchange of letters between Mr. E. E. Rogers, the western vice-president, and Mr. H. P. Temple. Mr. Rogers wrote on May 13, 1941:

"Now I had an opportunity of checking over our opposition and would not discount their ability, as a matter of fact, I think that the present manager in Winnipeg is the best representative of the Denco Co. that I have met, and we will have to watch him very carefully and I believe that he will co-operate with us any time to clean up some of the abuses that have existed in Winnipeg in the past . . .

I find that there seems to be considerable confusion over prices and in some instances, even though we have made price agreements, the Denco Co. are underselling us and frankly I do not believe that Toronto has paid enough attention to the complaints sent in by our Branch Managers. . .

P.S. I believe that we should make our arrangements for the West thro the Denco Western organization to put them on the spot. So would suggest that you ask Thompson if he is agreeable to this. Then they will have no excuse to blame Toronto for what they are doing.

I have already told Fred to check his price changes with Denco in Winnipeg and this will help . . ."  
(Exhibit 150)

To this Mr. Temple replied:

"Note your remarks about the Denco manager and I think probably he will be an improvement over Johnson and I only trust that he will co-operate and work in harmony with Fred and the other boys in the west.

I do not understand what you mean by 'confusion over prices' because there is a universal price book, both in the east and in the west, and naturally all the houses in the west are supposed to adhere to those prices, and if they do not do so we cannot do anything in Toronto. If Gouen is decent and will co-operate with Fred, between them they should see that the prices in the price book are adhered to."  
(Exhibit 161)

Denco's co-operation in ensuring adherence to the C.D.T.A. price agreement in the west was confirmed by its president, Dr. H. A. Thompson, in the following letter to Mr. Temple of August 22, 1941:

"Immediately upon receipt of word that you were making your Western trip, I tried to get you on the telephone but unfortunately you had just left. The purpose of this letter is to wish you 'bon voyage' and to advise you that any problems of price-cutting or anything else that might come up involving our good people in the West it might be discussed with any of our local men.

They have all been advised of your intention and ours to see that our western business is conducted on a clean, straightforward, competitive basis. All of our western people are being advised of your western visit and are being asked to give you every courtesy, and help, in case you should call upon them."

Similar assurances of such co-operation had been given the previous year by the presidents of Ash-Temple and Denco. Both companies were attempting to secure orders for X-ray machines from customers in Neepawa and Minnedosa, Manitoba, and the orders went to Denco. Mr. Dodds wrote to his president charging that Denco had cut prices. Dr. Thompson discussed the matter with Mr. H. P. Temple and wrote to him on June 14, 1940, confirming the conversation, and setting forth details of the invoices in question to show that the established prices had been followed. He also said:

"I want you to know that I appreciate the spirit of co-operation evidenced by yourself and Mr. Fred Dodds in respect to the various price-cutting problems which we have had in that territory . . .

Let me again assure you of my firm intention to co-operate with you and Mr. Dodds to produce a more stable competition in Winnipeg territory." (Exhibit 264)

Perhaps the most vivid illustration of the suppression of price competition in the west is found in a series of negotiations in Winnipeg. It shows the power of the C.T.D.A. to enforce price maintenance, with the support of manufacturers, not only upon the dealer members but also upon the dental laboratories which are not members.

On April 5, 1940, Mr. H. P. Temple wrote to Dr. H. A. Thompson stating that there was considerable price-cutting in Winnipeg in the sale of teeth. He stated that his company maintained the price but that Denco (Western) was giving an unauthorized discount of 20 per cent and that he knew Shaw Dental Laboratory Limited were offering this discount. Dr. Thompson was asked to tell Mr. Shaw that Dentists' Supply Company, the manufacturer, would be requested to refuse Shaw the 10 per cent bonus which it gave to laboratories, and further that the dealers would refuse to supply any of the laboratories unless they maintained the established prices. In this letter he stated:

"Unless this kind of thing is stopped, we will simply start and give everybody 20 per cent off, so in the end nobody is going to benefit but the dentist."

A meeting was held in Winnipeg on April 8, 1940, at which Dr. Thompson, Dr. Deans Price, representing Dentists' Supply Company, and Mr. Dodds, the Ash-Temple manager, met with all the laboratory proprietors. The following agreement was signed by these laboratory proprietors with the exception of Mr. Shaw:

"I hereby agree that starting May 1st, 1940, and thereafter I will not supply teeth alone or as part of the product of my laboratory such as dentures, bridges, etc. at less than the unit price as quoted in the current tooth lists. It is understood that if I do the dealers, The Dental Company of Canada Ltd., and The Ash-Temple Company Ltd. are hereby authorized to discontinue quantity lot discounts on teeth to me and the Dentists' Supply Company to cancel my tooth contract.

(Sgd.) H. Campbell  
P. M. McKinnon  
S. R. Reid  
L. McCombie  
P. Jeffries"

(Exhibit 269)



Mr. Shaw refused to sign, and was informed by Dr. Price that his company could not give him a contract for 1940. Four days later Mr. Shaw yielded to some extent in the following letter addressed to Mr. H. P. Temple at Toronto:

"I am writing you in keeping with my promise during our telephone conversation. Here are the reasons why I did not want any part in the tooth arrangement. First, it is an infringement on the criminal code section 498. Second, the type of competition we have in Winnipeg would find many loopholes in this agreement, and there are many, and it would not take long before the laboratories would be back to the old methods of giving various discounts. The third reason was that the majority of my doctors would resent any such a tie-up. We would find ourselves being accused of being part of a combine which you know they dislike. And fourth, if we were not allowed to sell teeth to the dentists it would cut down our profits to a point where we would be showing a loss according to our 1939 statement.

I was not in accord with the methods they were using in trying to force this thing upon me. I was given a matter of a few hours to decide. I have found snap decisions very expensive. The climax came when I refused to sign and Dr. Price of the Dentsply Company of New York said 'then I am sorry I cannot give you a contract for 1940.' Previous to this he had definitely stated that his Company wanted no part in dictating the policy of any laboratory, and what is this if it is not dictating. This was another method of trying to force me to sign.

After giving this matter considerable thought here is what I am willing to do, and I believe it is in fairness to everyone concerned, that we will give the same discount as the Supply Houses, 10 per cent for \$100 and 20 per cent for \$300. If at any time you find my laboratory not living up to this promise you can place upon my (*sic*) any penalty you see fit. This promise I will give to you in writing.

Please let me know your reaction to this."

(Exhibit 268)

On June 4, 1940, Dentists' Supply Company wrote to Shaw Laboratory referring to Shaw's alleged price-cutting and concluding as follows:

"Now then, Mr. Shaw, if you would tell us, and we most assuredly hope you will, that discounts on teeth either individually or those that are used in the product of your laboratory, will no longer be allowed, we will be very happy to send you a contract for the current year."

Shaw finally complied, as indicated in a further letter to him from Dentists' Supply Company written on June 19, 1940:

"It was most gratifying to receive your letter of June 17th, advising us that you are in complete agreement with the suggestions made in our letter of June 4th, and we are therefore pleased to enclose contract in the amount of \$5,000.00 to cover your purchases for the current year, on which a bonus of \$1,000.00 will be paid to you upon completion of same, under conditions specified therein."

The understanding of this agreement held by Dr. Thompson, who negotiated it, is expressed in a letter to Mr. D. Johnston written on April 12, 1940, in the following words:

"In any case, we, the Ash-Temple Company and all the laboratories in Winnipeg signatory to the agreement are obligated to the policy to discontinue price-cutting and we must not waver."

It was contended on behalf of Denco that the arrangements to eliminate price competition in Winnipeg did not constitute an agreement between the laboratories and the association dealers. It is clear from the quotations given above that the interested parties considered that an agreement had been made and that the dealers, as well as the laboratories, were obligated to observe it.

In British Columbia the sale of dental goods is largely done by Ash-Temple and B.C. Dental. The latter firm also does some business in Alberta, where it comes in contact with both Denco and Ash-Temple. Whenever price competition has arisen in this territory all three firms, as well as the C.D.T.A. secretary, have assisted in its elimination.

Special rates on mercury, lower than those listed in the price book, were reported to have been established by B.C. Dental in 1939. Mr. Lawrie, as C.D.T.A. secretary, therefore sent to B.C. Dental, on August 23, 1939, a letter

which was drafted for him by Mr. Alexander of Dominion Dental at the request of Ash-Temple. The letter concluded:

"The manufacturers authorize only the above prices, and it is generally understood among the Trade in Canada that we will sell goods only at the prices listed in the Universal Price Book." (Exhibit 65)

The contention that mercury prices are set by the manufacturers is not in accordance with the facts: any company, including B.C. Dental, has access to sources of supply for mercury entirely independent of the dental trade.

In its sales of equipment B.C. Dental quoted the same prices and terms as the other C.D.T.A. members, as shown in a letter of May 4, 1938 from that company to an Ontario dentist who was considering a move to British Columbia. Extracts from this letter include:

"Dental equipment is the same [here as] in Toronto, excepting that of course the actual freight is added. . . .

In the purchase of equipment we have the same terms as are available in Toronto, being members ourselves of the Canadian Dental Trade Association, as well as the American Dental Trade Association. . . ."

In 1941 negotiations took place between C.D.T.A. members regarding a 50-ounce quantity rate for dental alloys. The price book had never permitted more than a 20-ounce rate, but the practice of having the higher rate had apparently become established in Alberta and had been extended both by Denco and B.C. Dental. Correspondence between Dr. Thompson and Mr. A. E. Sinclair, president of B.C. Dental, is well summarized in a letter from the latter dated November 8, 1941:

"Your letter of October 31st received. When I wrote you on the 14th ult. with regard to Alloy, I had definitely given you my assurance that we would not make any quotations in Alberta on Alloy in quantity rates greater than the rates shown in the price book. There is only one man in Alberta that we have ever given a rate to on True Dentalloy, and in this case evidently someone else got the order.

We had always understood that there was a special rate on 50 ounces or more given in Alberta. We felt certain from your letter of criticism for giving this rate that we were now alone in this practice, and that you folks along with Ash-Temple had changed your policy because I meant every word I said and I quote from my letter of the 14th:

'I am pleased to have your assurance that this special price is not now given in Alberta, and I give you my assurance that we will follow suit, as we do not wish to needlessly cut our profits.'

You can imagine my great surprise on receiving your letter of October 31st to read the following paragraphs. I quote:

'I tried to make it clear to you during this discussion that although there is a certain defence for our having fallen in line with this practice, yet I felt in entire agreement with Mr. Temple that the practice should be stopped, and that all efforts should be bent to this end. We have already succeeded in discontinuing a few of these and have been hoping that within the next year to discontinue the rest.

'I was not aware at that time that you too were in on this practice, and it seems to me that you would, if you were fully aware of the facts of the situation, be quite willing to fall in line with this or any other scheme which has as its object the betterment of conditions among the dental trade in the West. If, on the other hand, you do not fall in line, then it will be necessary for both Mr. Temple and myself to continue to sell on this basis, and in all probability extend the practice somewhat.

'I have tried to make myself perfectly clear and to place all the cards on the table and will be glad to hear from you at your convenience as to whether or not you deem it advisable to discontinue the practice along with the Ash-Temple Company and ourselves.'

I don't know what could have prompted the above paragraphs from your letter of October 31st. You had my full assurance that we had discontinued quoting these prices, and that really should have been sufficient. You can imagine my great surprise in your evidently not having accepted my assurance, and further, that you are still giving these prices yourselves, and evidently were planning to continue giving them, because you stated that you hoped to discontinue the rest within the next year.

The fact that you are continuing to give these prices makes no difference to me because I have very little interest in Alberta business, and possibly a good example from me may help to clean a condition that is evidently deep-rooted.

I am sorry that, if you had occasion to discuss this matter with Mr. Temple, you did not show him my letter because Mr. Temple knows me well enough to know that when I give an assurance it really means exactly that.

There is no reason why either you or Mr. Temple should extend this practice on my account because as far as we are concerned here in B.C., Mr. Rogers and I have a clear understanding, and he knows as well that my assurance is of value.

There is only one thought I have in mind, and that is that possibly you did not read my letter of October 14 carefully. Possibly you may think I'm a little touchy on this subject, but then I think it is just as well to have a clear understanding and knowledge of those involved.

At any rate the matter is closed as far as I'm concerned, and so that there will be no misunderstanding, please be again assured that we are not quoting special prices in Alberta on Alloy of any make." (Exhibit 272)

Mr. H. P. Temple did not hesitate to write direct to Mr. Sinclair when he suspected that B. C. Dental was not conforming to the price book. On February 16, 1942, he wrote:

"Glad to receive your letter of the 11th and note that the quotation you made on twenty-four boxes of Kerr Compound was incorrect and that it was just an oversight.

The other day, Ted, I heard of another case where you had offered 5 per cent cash discount and as you know, we have not given 5 per cent cash discount for many, many years. Please watch that."

To this Mr. Sinclair replied, in part:

"There must be some mistake about the 5 per cent cash discount. . .

I don't think that I would pay so much attention to what these salesmen of yours tell you, Mr. Temple. This Company, as nearly as I can judge, has as pure a record as there is in Canada." (Exhibit 170)

That the adoption of the formula method of fixing prices and the issuance of price lists by C.D.T.A. were intended to eliminate any possible competition among members is further demonstrated in the following instances. On June 2, 1941, Mr. H. P. Temple wrote to the Vancouver branch of Ash-Temple:

"Received your letter stating that the B.C. Dental were selling Coetrans at a special price. We have taken this up with Mr. Lawrie, Secretary of the Canadian Dental Trade Association, and he will immediately forward a correct price. You see the B.C. Dental and tell them that they have to adhere to the price set by Mr. Lawrie, our Secretary."

Later, on October 21, 1941, Mr. Temple wrote to the Vancouver Branch:

"When I was in Vancouver you asked me to let you know how much we added on to American goods when they came in duty free. It is the rule of our association that we add on 23 per cent because we actually pay 23.07 per cent, so will you please see that in importing any free goods from the United States you add on 23 per cent.

I understand that the B.C. Dental are only adding on 16 per cent, so I am asking Mr. Lawrie, our Secretary, to write them and explain to them just why they should add on 23 per cent."<sup>1</sup> (Exhibit 166)

The C.D.T.A. secretary, in carrying out Mr. Temple's request, used more careful language when he wrote on October 23, 1941, to Mr. Sinclair:

"I have found a little confusion existing with reference to the current formula for arriving at resale prices on goods imported from the United States and I am, therefore, sending a copy of the latest formula to you.

Possibly you are already using this formula, but in view of the condition I believe exists in certain parts of the country, I thought it best to send new copies."

The joint activities of association members with respect to the dental trade in Ontario and Quebec are recorded in the preceding sections of this report. The four Toronto dealers dominate the trade and are accustomed to meeting frequently in committees to discuss and agree upon prices. In the early years there were many meetings of the Welfare Committee and for the brief period when records were kept of these meetings they were replete with the most detailed types of price agreement. In more recent years the Price Book Committee has met

<sup>1</sup> The 23 per cent formula addition to the American retail price for goods duty free and sales tax exempt was derived from the adverse exchange, war exchange tax and freight components in their wholesale cost.



as often as twice a week to discuss prices and terms, and there is evidence of telephone conversations between the members for such purposes when matters of mutual interest have arisen.

Charges of price-cutting are not ordinarily taken up by correspondence, since most of the dealers are located in Toronto, but a few examples of letters on the subject are cited. They show that constant efforts have been made to enforce C.D.T.A. prices, and that frequent assurances are given that they were being maintained.

A letter from Mr. H. P. Temple to the London branch of Ash-Temple, written on April 10, 1941, reads:

"Received the circulars sent out by The Dominion Dental showing the wrong prices on Sulfanilamide. We called up Don Lawrie and he stated the circulars came in last week when he was away and unfortunately he did not check the prices, but he has already sent a letter to all their salesmen telling them to quote the prices as quoted in the price book.

If any of your customers ask you about this, tell them that the circular was incorrect and that Dominion are charging the same price as we are." (Exhibit 149)

Mr. D. L. Lawrie on behalf of Dominion Dental wrote to Mr. William McTavish of National Refining on May 7, 1941, under confidential cover:

"We understand from information recently received concerning Anesthetic sales made by our company to Dr. —, that you are under the impression a quantity rate, not authorized by the manufacturer, was extended by us.

Four separate sales of 200 each Waites N.P.C. Carpules have been made to Dr. — since the first of this year. Each sale has been charged at \$16.90 for 200.

Dr. — did ask our representative for a rate on 1,000, but it was explained to him that there was no rate on quantities above 200. No premium, bonus or rebate of any kind has been given; none have been promised and none will be given.

In view of information of a conflicting nature which you may have received, we thought it desirable to give you the above facts."

Denco wrote to Paterson on January 19, 1943, following a complaint of price-cutting levelled against the latter:

"We have found in the past that it is not at all satisfactory to give the names of those customers to whom materials have been sold at a cut price or at a rate lower than those recognized by the C.D.T.A. because the reaction of the offender would be to go to those customers and explain that another dealer was responsible for increasing the price.

We would, therefore, suggest that you contact Mr. Johnston with a view of maintaining the prices which are in effect in all other parts of the Dominion. (Exhibit 136)

Relations between Ash-Temple and Denco are illustrated in a letter written on May 16, 1944, by Mr. H. G. Harris of Ash-Temple to their Ottawa branch. In this letter he refers to Mr. M. E. Bower, who in addition to being Treasurer of Denco was also President and General Manager of Denco (Ontario):

"We were discussing the matter of 100 ounces of alloy at a special figure to Doctor — of Ottawa. I thought it advisable to take this matter up with Bud Bowers quite frankly, because Bud plays the game fair. He admitted that it might have occurred and asked for a little time to check Doctor — purchases. This he did carefully and found that Doctor — bought 20 ounces of alloy from him in December last, which was delivered at the 20 ounce rate in one lot. He went back for a period of two years and found that this was the only alloy order which they had sold Doctor —.

Therefore, it is not The Dental Company, which has been giving Doctor — a quotation on 100 ounces of alloy and in fairness to them and to our other customers, we feel that we should not quote him on a 100 ounce lot."

One final example should be cited in regard to the suppression of price competition because it serves to illustrate the power of discipline existing within the C.D.T.A. which may be invoked in extreme cases. On May 20, 1940, Mr. C. A. McKenna of S. S. White wrote to Paterson a confidential letter which is quoted in part:

"There is some complaint concerning the number of outfits you have sold to graduates this year. One of the companies with head office here and branch in Montreal is loud 93664—7½

in its denunciation of your methods and has demanded that I, representing this company, take some action to correct this condition. . .

I am writing this letter in order that you may be in position to refute any claims of cutting or otherwise breaking the rules which may be laid against you. I remember your showing me a telegram at the annual meeting of the C.D.T.A. here, which specifically charged a salesman of a Toronto company with making an offer much below the one your representative had made to one certain student.

If I do come to Montreal it will be on the express understanding that Mr. Johnston and Mr. Austin, as well as yourself, be present at any conference or meeting we may hold. I do not think it necessary to assure you that I, as representative of the S. S. White Company, do not place too much reliance on unsupported charges made by disappointed salesmen or branch managers. I do hope you may be able to convince the others, as well as myself, that your methods and practices are no different from those employed by your competitors. This should not be very difficult. There is of course a possibility that in a quiet, properly conducted meeting, we might arrive at some arrangements which would better the conditions for you and for all others in the dental supply business, and if we can accomplish this it will have been worthwhile."

(Exhibit 309)

That Mr. Simard of Paterson accepted this form of regulation was shown by his reply of May 21, 1940, in which he stated:

"We are ready to meet the two Montreal representatives and yourself any time, and once more you will be in a position to convince yourself of the dirty cut throat campaign against us through manufacturers."

Just as price competition amongst C.D.T.A. dealers has been all but completely suppressed by agreement, so price competition from independent dealers has been kept to a minimum by other means. The competition of independents is slight, of course, because C.D.T.A. members have been successful in inducing manufacturers of standard products to restrict sales to members. Independents have been able to quote lower prices only on goods they can secure from other sources, which do not receive the general acceptance accorded to standard products. A few cases have been found of the same products being available initially without restriction to both association and non-association dealers. In some instances as soon as association dealers have become aware of lower prices being offered by independents they have sought to have the manufacturer discontinue selling to independents so that their higher prices might prevail. In a few cases where this result has not been obtained, C.D.T.A. prices have been reduced to meet the competition.

In 1944 the William Getz Company of Chicago offered a dental product without restriction to both independent and association dealers.

Independent dealers sold the product at a lower price than that established by C.D.T.A. and the matter became the subject of complaint to the manufacturer by C.D.T.A. members. After making a complaint regarding sale at lower prices in Saskatoon, Denco wrote to the Getz company again, on April 26, 1944, when further sales were reported from Calgary:

"We are in receipt of a letter this morning from the manager of our Calgary office to the effect that Mr. Turner of the Mid-West Dental Supply Company, Saskatoon, has sent out a broadcast advertising Getz (400) permanent liner, per tube \$9.50.

This, you will recall, is a similar complaint to the one received from our manager in Saskatoon. The situation at present is quite obvious: it will be difficult for us to sell your product in Western Canada and again we suggest as in our previous letter that your product be confined to the associated dealers.

Will you be so good as to let me have your decision in the matter just as soon as possible since our western men are more or less marking time at present."

The Getz Company replied on April 27, 1944:

"For your information the Mid-West Dental Supply Company has ordered a total of 24 tubes since we came out with the Liner and at the out-set we can't understand how he has been able to create any kind of a market with that amount of material. Furthermore, they are located in a city where we thought they would not interfere with any of our good accounts in Canada, but apparently we are wrong. Frankly, we never did tell them what price to sell the Liner for because when we sold them our product we had no idea about the \$12.50 price that has been established since the last shipment went forward to Saskatoon.

If the Mid-West Dental Supply Company can be relied on to maintain the \$12.50 price then we will have them lined up on that basis but on the other hand if you have evidence that these people cannot be relied upon—then we do not want to make any further shipments to them."

Denco's information was that the Mid-West Company was selling the product at \$9.50 as compared with the C.D.T.A. price of \$12.50, and Paterson reported that Dépôt Dentaire was selling it at \$9.45. In view of the discounts stated to have been allowed by the manufacturer, the delivered cost in gross lots would appear to have been \$5.63, thus affording the C.D.T.A. dealer a gross profit margin of 122 per cent of cost when sold at the \$12.50 price. Moreover the manufacturer bore the cost of advertising and authorized the sale of his goods on approval, undertaking to pass credit to the dealer for all returns. This is set out in a letter of confirmation from Denco to Getz dated March 2, 1944:

"In accordance with our conversation an order for one gross or more of reliner entitles us to a discount of 50 per cent and 10 per cent. It is understood that the liner will be sent out on approval basis and those returned, if any, will be reported to you and full credit will be allowed. These particular packages will not be returned due to the expense involved in transportation.

The 3000 circulars ordered at the convention will be mailed with our monthly statements to coincide with your advertisement in our Canadian Dental Journal. The retail price will be omitted from these circulars and they will be clearly marked 'Printed in the U.S.A.' The cost of importing circulars, duty, exchange, etc., to be charged back to your account."

Other correspondence on this subject shows that Denco wrote Getz objecting to their sales to Mid-West and later advised Getz that Mid-West could not be relied upon to maintain the \$12.50 price, and Getz accordingly reported that they intended not to supply them further. Dépôt Dentaire, on the other hand, undertook to maintain the price. Dominion Dental, which was also interested in the product, appears to have proceeded in a methodical manner in seeking to eliminate independents in the interest of C.D.T.A. members. The method is illustrated by a letter from Dominion to Paterson on March 8, 1944:

"The Getz Company have eliminated all Toronto distributors outside of the Association, with the exception of one dealer, who is selling the product at \$12.50. I am writing them today, asking them to do the same in Montreal. Ash-Temple and Denco are selling it down there, and you should be selling it too, and if they will eliminate Dépôt Dentaire, they will be playing along with the rest of us and it will be to their advantage as well as to ours." (Exhibit 287)

An example of C.D.T.A. prices being reduced as the result of competition from independents is found in an official price notice sent by Mr. Laird to Paterson on November 17, 1944:

"It is recommended that as a result of the competition of independent dealers that the price of Opatow Impression Paste be reduced to \$4.25.

The independent dealers themselves found it necessary to make this reduction as a result of competition within their own ranks.

At the above price it will yield 33.2 per cent if bought in small lots, but if bought in gross quantities the profit will be 39.7 per cent." (Exhibit 218)

Another letter relating to the same matter, written by Mr. M. E. Bower on November 21, 1944, and found in the internal Denco correspondence shows the nature of the deliberations which gave rise to the notice:

"It has been agreed among the Dealers here that the prices of Opatow Impression Paste should be as follows:

Per package .....	\$ 4.25
12 packages .....	48.00

The reason for the reduction in price is due to the fact that Ed. Green is selling at the above prices." (Exhibit 141)



A far-reaching case of agreement among the C.D.T.A. members took place on October 23, 1945, at the semi-annual meeting of the association. It was decided that no changes would be made in Canadian prices when the 10 per cent War Exchange Tax was discontinued. The official notice over the signature of the price book committee was sent out on October 29, 1945, as follows:

"The recent abolition of the War Exchange Tax will naturally mean some differences in the laid down costs of dental materials and articles in Canada.

The price controls in the United States have been rescinded on dental merchandise, instruments, and manufacturers in the United States, excepting furniture, are now free to raise their prices as they see fit. Already this office has been flooded with price changes which in most part are very closely compensated for by the reduction of the 10 per cent tax. It was, therefore, felt that, generally speaking, Canadian prices should be maintained at their present level with the exceptions of goods which are not in the price book or which have no previously established ceiling.

The writer has been instructed by the Semi-Annual Meeting to issue the enclosed scale which would serve as a guidance and assist you to establish the Canadian price to dentists of any articles not at present listed in the universal price book. The total percentage figure is that which should be added to the United States' retail price to ensure the Canadian dealer that he will receive the same margin of profit as does the dealer in the United States." (Exhibit 227)

There was in fact no change at this time in the dealers' costs of at least two major items, teeth and equipment, and the Dentists' Supply Company insisted that on their products a price reduction be made despite the C.D.T.A. decision. Checking the price book sheets, all of which are dated, it is found that the prices of equipment and supplies other than teeth were not reduced to give effect to the decreased costs. While dental goods were subject at the time to the ceiling prices permitted by the Wartime Prices and Trade Board, it must be stressed that these were maximum prices. Nothing in the regulations would confer authority upon the organized trade to decide by agreement to maintain existing prices in the face of decreased costs. In the absence of such agreement it is reasonable to suppose that some dealers would have reduced their prices in order to maintain their accustomed margins. It should be noted that where there had been no change in American prices this general agreement maintained prices at a level even higher than would have been established by the application of the formula.

A more local example of price enhancement by direct agreement is described in the following letter, which was written on July 23, 1945, by Mr. Paul Gouin of Denco (Western) to the other Denco houses in the west:

"Please note we have 12 Getz Floor Mats in Winnipeg. Price is \$14.35, f.o.b. Toronto. Ash-Temple have brought these in direct from Getz and could sell them at a profit for \$13.50. Nevertheless, we have agreed on a price of \$15.00 f.o.b. any Western City."

Although it relates to a comparatively unimportant item, the following letter provides an example of a price which is obviously exorbitant, a danger which is always present within an agreed-upon pricing system. The letter in question, written by Mr. J. K. Laird to Mr. D. L. Lawrie on February 13, 1941, relates to a minor product and reads:

"Confirming our telephone conversation here are a few price book notes:—

Page B 7. Bottles Devilbiss, each ..... 80

We have an invoice dated February 8th from Devilbiss charging 1 dozen of these bottle(s) at \$1.80 per dozen plus sales tax which makes the price book price seem high."

(Exhibit 181)

In evidence Mr. Laird explained that there were only two items in the price book made by Devilbiss and that they were both taken from that company's price list. He said that this letter sounded as if he were drawing the attention of Mr. Lawrie to an error (Evidence, p. 1064). Since that letter was written, however, the price has remained at 80 cents, an amount which in 1941 afforded a margin of approximately 400 per cent over invoice cost. This is the price in the current price book, the sheet concerned bearing the date of February, 1944.

## **XI. CONCLUSION**

The investigation which has been made into the activities of the Canadian Dental Trade Association, as recorded in this report, has revealed far-reaching interferences in Canada with freedom of trade with respect to dental supplies. Available records of the Canadian Dental Trade Association and of its members have permitted a detailed examination of only part of the period in which the combination has been operating. Even for the period to which the records apply it has been found that many of the proceedings of the Association or of its various committees or groups have not been recorded in a way to disclose fully decisions reached or actions taken. Formal minutes of the annual meetings of the Association, available in this inquiry, embrace the period from 1930 on.

The conclusions expressed in this report are based upon study of these records of the Association and of all other evidence obtained in the investigation, including especially correspondence between members of the Association. In reviewing this evidence it has been recognized that the character and effect of an alleged combine should be judged not by dismembering it and viewing its separate parts, but by examining it as a whole and considering the cumulative effect of all its activities.

Bearing in mind that documents contemporary with the events described and written for the information or guidance of those concerned in them must be regarded as the most accurate record now available, this report has, as far as possible, used the language of such documents in setting forth the objectives and policies of the members of the Canadian Dental Trade Association and the results achieved. Oral evidence secured in the hearings held during the investigation has, of course, been given due weight, especially in resolving ambiguities, but where the plain meaning of language used in the documents had to be reconciled with later conflicting oral evidence the former has usually been given primary weight, having regard to the frailty of human memory.

The evidence reveals that the practices established by the Canadian Dental Trade Association and followed by its members have operated to eliminate price competition throughout almost the entire trade in dental supplies across Canada. These practices have involved the establishment of a system of price-fixing through a Universal Price Book and otherwise, which results in common prices on the same goods being charged by all members of the Association. The system of common prices has been kept in force by such practices as agreed quantity rates, uniform classification of customers, common rates of discounts to such agreed classes of customers and uniform terms of sale. The arrangements have been supported by a common policy among many manufacturing members of the American Dental Trade Association, of which the Canadian Dental Trade Association is a part, to make their products available only to members of the association.

The nature of the trade in dental goods and the position held by members of the Canadian Dental Trade Association are described in Sections II and III. The trade is shown to be dominated by four Toronto dealers who handle approximately three-quarters of the trade, while members of the association on the whole are found to have eighty-seven or eighty-eight per cent of the total sales of dental goods in Canada. Canadian dentistry is dependent in very large measure for supplies and equipment upon the United States, where the principal manufacturers and dealers are closely organized in the American Dental Trade Association, the parent body of the Canadian Dental Trade Association.



In Section IV it is shown that the Canadian Dental Trade Association, in so far as dealer membership is concerned, has been operated as a closed association since 1928 and that constant efforts have been made by its members to confine as large a part of the dental trade as possible within their own group. Manufacturers of dental goods have been urged, in certain instances, to confine the distribution of their products to association members. In other cases, efforts have been made to have them withdraw their recognition of non-association dealers as distributors.

Agreement to establish and maintain uniform selling prices through the publication of a Universal Price Book is described in Section V. In some cases agreement involved the maintenance of resale prices suggested by the manufacturer. In many cases association members agreed upon the margins to be added to American prices in order to arrive at a uniform price for sales in Canada. The various methods followed in furtherance of the price-fixing agreement are described in Section VI. Examples are given of direct price-fixing by interested members of the association in the determination of the prices of certain private-brand articles and in the fixing of prices of goods sold in the western provinces.

The elimination of price competition among the members of the association handling the large bulk of the trade in dental goods throughout Canada has permitted the establishment and maintenance of arbitrary discounts to various classes of customers. Dentists who are prepared to buy in the same quantities as other buyers are denied the discounts available to others and, in some cases, the unit prices for sales to dentists are set initially at a substantially higher level than the price of the same unit to other customers.

The margins over wholesale prices agreed upon by members of the Canadian Dental Trade Association have been shown to be substantial and to have been fixed regardless of the efficiency of the individual distributor. No opportunity is afforded to a dealer to pass on benefits of more efficient or new methods of distribution to his customers in the form of lower prices. In Section VIII it is shown how the margins of members of the Canadian Dental Trade Association have been increased by the addition of agreed percentages to items of government imposts, such as customs duties and sales tax. The result has been that Canadian prices of dutiable goods have been fixed by the trade at high levels, much higher than American prices plus actual customs duty and other outlays. It is submitted that the duties of custom have assisted in the promotion of the undue advantage of members of the combine alleged to exist among the firms associated in the Canadian Dental Trade Association and that one appropriate remedy might be found under Section 29 of the Act which permits modification of duties by the Governor in Council.

Section IX deals with the pricing policies followed by members of the Canadian Dental Trade Association in the sale of dental acrylics, synthetic materials developed in the United States and Great Britain and widely adopted during the period of the war in the making of dental plates. One class of acrylics imported from the United States is shown to have been sold to dentists in 1940 at \$35.20 a package and since 1944 at \$15.50. A similar product in about the same size package is supplied to dentists in England for £1 or \$4.03 in Canadian funds.

Particular instances of efforts made by members of the association to prevent or eliminate price competition are given in Section X. Agreements operating in various regions of Canada are described and the essential role played by the Universal Price Book and the confining of trade to members of the association are further illustrated. Reference is made to several cases where these efforts resulted in the elimination of lower prices which had been in effect.

The dental profession, which the dental trade provides with necessary equipment and supplies, has on the whole had no direct knowledge of the



basis on which dental trade practices have been developed although, of course, dentists have experienced the results of such practices. These have been evident to them in the uniformity of prices which they have had to pay for purchases made from members of the Canadian Dental Trade Association, in their inability to buy many needed supplies from non-members, and in the wide disparity between prices of dental goods in Canada and in the United States.

Other evidence of the dissatisfaction of certain dentists with the conduct of the dental trade is found in the establishment and growth of *Dépôt Dentaire de Montréal Limitée*, which now has the largest sales of any independent dealer in Canada. This is a limited company organized in 1938 by five Montreal dentists to combat the conditions which they found in their purchases of dental supplies. Membership is confined to the dental profession but any dentist may become a member on the purchase of four shares of stock at a cost of \$200. From the five original dentists the membership had grown, by the time of the hearings, to 272 shareholders, located in Quebec and New Brunswick. The company sells both to stockholders and others and has a branch depot in Quebec City as well as its main depot in Montreal. Even though dissatisfaction resulted in this co-operative action by the dentists themselves, their efforts have been seriously impeded by the activities of the association. *Dépôt Dentaire*, like other independent dealers, has been greatly handicapped by its inability to purchase from association manufacturers and also by the efforts of C.D.T.A. dealers to induce suppliers not to deal with it.

In spite of the conclusive evidence that there was almost a complete suppression of price competition among dental dealers throughout the trade in Canada, it was argued by counsel for members of the association that no serious consequences arose from such suppression because of the indirect effect of the prices charged for dental supplies upon the cost of dental services to the public. It was claimed, for example, that prices of individual dental goods used in particular operations have an infinitesimal effect upon the fees charged by a dentist to his patient. An example was given of the cost of the alloy used in filling one tooth which might amount to only three cents, whereas the dentist might charge as his fee for the operation an amount ranging from \$1 to \$5. Thus it was argued that the cost of these products is not a factor which influences the amount which the dentist charges.

This, of course, fails to take into account the expensive equipment used by the dentist, as well as other incidental supplies used in the operation cited, the total cost of which must be reflected in his charge for each operation. The general logic of such an argument, which involves the attempt to view a single product and a single operation in isolation, inevitably leads to a serious misconception of the importance of dental goods as a cost factor which must be borne by the ultimate consumers, who are the general public.

A rough measurement which has some validity can be derived from statistical evidence. It is known that the average gross income of Canadian dentists in 1944 was \$8,300, and that on December 31, 1946, there were 4,602 dentists in Canada. Assuming that no change occurred in average gross income, the total cost of dental services to the public in 1946 would be approximately \$38,197,000. If sales in 1946 were the same as in 1945, namely \$4,863,000, dental goods sold in 1946 would thus be some 12 per cent of the total cost of dental services to the public. This result is in accordance with the testimony of professional witnesses that such costs were substantial, and corresponds with an estimate of one of them that they range from ten to fifteen per cent of gross income. These professional witnesses agreed that the cost of supplies and equipment would have its effect upon fees charged to the public.

Apart from the immediate effects which changes in the cost of dental supplies may produce, it must not be overlooked that the operation of a competitive economy depends upon the inter-relation of prices and the corrective effects

produced by changes in prices. All price changes thus produce effects which are cumulative in character, and changes in the prices of minor as well as major products are necessary to enable the economy to function effectively. Some recognition is paid to this aspect in the insistence of the trade that there is competition among manufacturers of similar products even when there is no competition among dealers handling the same product. Active competition in price among manufacturers of dental supplies, most of them produced in the United States, cannot be assumed, particularly in the face of some of the evidence. Even, however, if manufacturers were determining their own selling prices independently of each other, there is still public need for active price competition among the distributors of their products. In the Canadian trade in dental supplies, competition has certainly not been permitted to play its proper part, and its absence is reflected in dealers' prices and margins. In many cases the margin taken by the dealer, apart from payments for merchandise, duties, taxes, etc., equals or exceeds the cost of the goods at the factory door. A large part of the price paid by the consumer is thus removed from competitive influences and becomes subject to arbitrary fixations such as have been shown in this report. "The specific public interest in free competition"<sup>1</sup> and the fact that "our economic system, as recognized by our laws, is individualistic and competitive"<sup>2</sup> would thus appear to have been disregarded.

Although instances of large margins on certain dental products have been given earlier in this report, no attempt has been made to appraise in detail the reasonableness or unreasonableness of the common prices followed by members of C.D.T.A. Except in fields where government regulation of business has been established, our laws recognize price competition as the normal and primary safeguard of the public against excessive prices by seeking to prevent undue interferences with this automatic control. This is the interpretation followed by Canadian courts, as typified in the following quotation from Chief Justice Fitzpatrick of the Supreme Court of Canada in his judgment in one of the leading Canadian cases on the subject:

"Parliament has not sought to regulate the prices of commodities to the consumer, but it is the policy of the law to encourage trade and commerce and Parliament has declared illegal all agreements and combinations entered into for the purpose of limiting the activities of individuals for the promotion of trade; and preventing or lessening unduly that competition which is the life of trade and the only effective regulator of prices is prohibited."<sup>3</sup>

It was frequently stated or implied that the C.D.T.A. policies were substantially in the public interest because they prevented cut-throat competition, because they tended to ensure that the quality of dental goods sold was of the highest, and inhibited the development of additional depots at a time when facilities were already adequate to serve the dental profession. Such arguments are frequently advanced by trade associations which attempt to enforce restrictive conditions upon their industry. In a recent book Professor Herman Levy, discussing British associations which included in their programmes the maintenance of resale prices, the establishment of uniform margins, the restriction of trading to "legitimate" channels and other similar policies, wrote:

"Wherever in modern days monopolist organisations have defended their aims on grounds of public interest they have put forward the argument that 'cut-throat' competition was a social evil and that it was the object of combines to combat it. It is only natural that the argument is now used with great vigour to check the possible future tendencies towards a revival of that retail trade competition which, in the view of associations and association-minded traders, war conditions have so happily restricted."<sup>4</sup>

<sup>1</sup>Duff, C.J., in *Container Materials Ltd. et al., v. The King*, (1942) 1 D.L.R. 529 at page 533.

<sup>2</sup>Raney, J., in *Rex v. Alexander Ltd. et al.*, (1932) 2 D.L.R. 109 at page 123.

<sup>3</sup>In *Weidman v. Shragge* (1912) 46 S.C.R. 1 at page 4.

A few additional quotations from judicial decisions in Canada and the United States, bearing on the above and other aspects of the law, are included in Appendix I of this report.

<sup>4</sup>Herman Levy: *Retail Trade Associations*. Oxford University Press N.Y. 1944, p. 237.



This argument on behalf of trade associations has been advanced in almost every case where their practices have been condemned by Canadian courts. Typical of the comments of the judiciary on this point is the following from Mr. Justice Anglin in the case of *Weidman v. Shragge*:

"... the prime question certainly must be, does it [the agreement alleged to be obnoxious to Section 498] however advantageous or even necessary for the protection of the business interests of the parties, impose improper, inordinate, excessive or oppressive restrictions upon that competition the benefit of which is the right of everyone."<sup>1</sup>

The restoration of competition as defined by the courts is of particular importance at this time when wartime controls are being lifted and greater reliance is being placed upon freedom of trade to protect the public. In the period of the war, competition was to a considerable extent replaced by public regulation to prevent inflation in the face of scarcities of supplies and expanded demands of buyers. Government regulation operated to set a ceiling beyond which prices could not be permitted to go, but it was government policy that competition should operate, wherever possible, to bring prices below these maximum levels.

The utmost emphasis was placed by members of the Canadian Dental Trade Association and by their counsel upon the contentions that the manufacturers whose products were subject to the formula method of price-fixing followed by the association had approved the use of the system and that the uniform retail prices, in other cases, have been established by the manufacturer concerned. These aspects of the establishment of retail prices have been dealt with in the preceding sections of this report. The inclusion of manufacturers in the membership of the association and their participation in the maintenance of retail prices have been shown. If manufacturers and dealers have worked together to limit competition unduly, the particular method or machinery employed in establishing re-sale prices does not appear to be especially material. The essential element must be the effect of price-fixing on the right of the public to free competition. Action by a manufacturer in requiring all dealers to sell his products at fixed re-sale prices (even though there be no agreement with other manufacturers on the re-sale price policy) may be just as effective in eliminating dealer competition in the sale of that product as joint action by the dealers themselves to achieve the same end. It may be even more effective because the manufacturer has the power to cut off the supply of important commodities from any dealer who does not maintain the fixed prices. When all the manufacturers, or virtually all, adopt the same policy, the effect is to make rigid the dealers' margins on all these products and to prevent any price competition amongst them. When the dealers organize to bring pressure on manufacturers to adopt such a policy, and when that organization assists in the enforcement of such a policy, the only element of competition left is "mere salesmanship"<sup>2</sup> or some other form of competition which means higher costs and therefore higher prices. And when, furthermore, the principal manufacturers unite with all the

<sup>1</sup> 46 S.C.R. 1 at pages 42-43. Similar interpretation of the law in this respect has been given in more recent Canadian judgments, e.g. by Mignault, J. in *Stinson-Reeb Builders Supply Co. et al. v. The King*, (1929) S.C.R. 276 at page 280:

"Injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine, is what brings an agreement or a combination under the ban of Section 498 Cr. C."

See also

*Bond, J. in Rex v. Canadian Import Co.*, (1935) 3 D.L.R. 330 at page 335:

"It is no defence to such a charge as the present one to say that the steps taken were necessary in order to stabilize the industry or to enable it to exist."

<sup>2</sup> *Rex v. Container Materials Ltd. et al.*, (1941) 3 D.L.R. 145 (Ontario Court of Appeal), per Robertson, C. J., who stated at pages 167-168: "Competition from which everything that makes for success is eliminated except salesmanship is not the free competition that s. 498 is mainly designed to protect. It brings to the customer no opportunity to buy at a lower price or on better terms, or to buy better or more attractive goods for the same money, and this is one of the principal benefits to be had from free competition. The chief factor in increasing sales under conditions such as prevailed under this arrangement is mere salesmanship."



dealers in an association designed and operated to fix and maintain prices and to prevent other dealers from participating in the business, the most complete type of suppression of competition is the inevitable result.

All these restrictions are present in the operations of the Canadian Dental Trade Association. Under it the price flexibility which is an essential characteristic of a really competitive system has virtually disappeared. The protection which price competition is supposed to afford to the ultimate buyers is denied them. So long as this type of control continues, the market is not a free market but a sellers' market, and the programme is one of restriction rather than of freedom.

It is such unduly restrictive conditions that the Combines Investigation Act was designed to prevent. It is such conditions that Canadian courts have consistently condemned as undue restraints of trade. A review of all the documentary and oral evidence in the present case, in the light of the Combines Investigation Act as interpreted by the courts, leads inevitably to the conclusion that this is a combination which has operated to the detriment and against the interest of the Canadian public.

It is my opinion, therefore, that a combine exists in the distribution and sale of dental supplies in Canada, within the meaning of the Combines Investigation Act, and that all the members of the Canadian Dental Trade Association have been parties and privy to this combine and have knowingly assisted in its formation or operation.

**Yours faithfully,**

**F. A. McGREGOR**

*Commissioner, Combines Investigation Act.*

## APPENDIX I

### SOME ASPECTS OF THE LAW RELATING TO UNDUE RESTRAINT OF TRADE

The principles of the common law respecting combinations in restraint of trade were first reinforced in Canada by Dominion legislation in 1889. The Act passed in 1889, as amended, is now embodied in sections 496 to 498 of the Criminal Code. Parallel legislation in the United States, the Sherman Anti-trust Act, was enacted in 1890. The Combines Investigation Act in substantially its present form was passed by the Canadian Parliament in 1923. It was amended in 1935, 1937 and 1946. In both countries a consistent body of jurisprudence has been built up interpreting this type of legislation. This appendix is in no sense a comprehensive survey of that development but consists of notes on the Canadian statutes and a few extracts from some of the principal judgments of Canadian and American courts. It will illustrate some of the principles established by the courts which have to be considered in a combines inquiry. These quotations may serve as convenient references for readers of the foregoing report. The full significance of extracts of this sort can, of course, be fully appreciated only in the light of the complete decisions and related cases.

#### A. Statutes

##### COMBINES INVESTIGATIONS ACT—*R.S.C. 1927, c. 26, and amendments thereto.*

Section 32 makes it an indictable offence for a person to be party or privy to or to knowingly assist in the formation or operation of a "combine".

A "combine" is defined by Section 2(1) as "a combination having relation to any commodity which may be the subject of trade or commerce, of two or more persons by way of actual or tacit contract, agreement or arrangement having or designed to have the effect of

- (a) limiting facilities for transporting, producing, manufacturing, supplying, storing or dealing, or
  - (b) preventing, limiting or lessening manufacture or production, or
  - (c) fixing a common price or a resale price, or a common rental, or a common cost of storage or transportation, or
  - (d) enhancing the price, rental or cost of article, rental, storage or transportation, or
  - (e) preventing or lessening competition in, or substantially controlling within any particular area or district or generally, production, manufacture, purchase, barter, sale, storage, transportation, insurance or supply, or
  - (f) otherwise restraining or injuring trade or commerce;
- or a merger, trust or monopoly; which combination, merger, trust or monopoly has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others."

A "merger, trust or monopoly" is defined by Section 2(4) as meaning "one or more persons

- (a) who has or have purchased, leased or otherwise acquired any control over or interest in the whole or part of the business of another; or
  - (b) who either substantially or completely control, throughout any particular area or district in Canada or throughout Canada the class or species of business in which he is or they are engaged;
- and extends and applies only to the business of manufacturing, producing, transporting, purchasing, supplying, storing or dealing in commodities which may be the subject of trade or commerce: Provided that this subsection shall not be construed or applied so as to limit or impair any right or interest derived under *The Patent Act, 1935*, or under any other statute of Canada."

#### SECTION 498 OF THE CRIMINAL CODE

*R.S.C. 1927, c. 36*, makes it an indictable offence for a person to conspire, combine, agree or arrange with any other person

- "(a) to unduly limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or

- (b) to restrain or injure trade or commerce in relation to any such article or commodity; or
- (c) to unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or
- (d) to unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity, or in the price of insurance upon person or property."

The offences created by Section 498 have been construed by the courts as being of substantially the same character as those created by the Combines Investigation Act.

The Commissioner of the Combines Investigation Act is charged by the Act with the responsibility of investigating alleged combines. On completion of a formal investigation he must report the results of his inquiry to the Minister of Justice and his report, unless he recommends otherwise, must be made public. If the Commissioner has found a combine to exist contrary to the Act, this report will then ordinarily be transmitted to the attorney general of a province within which the alleged offence was committed or to the Attorney General of Canada—so that decision can be reached whether prosecution or other proceedings should be instituted.

## B. Extracts from Legal Decisions

### I. CANADIAN DECISIONS

#### (a) THE PUBLIC INTEREST IN FREE COMPETITION

*"The right of competition . . ."*

"The right of competition is the right of everyone, and Parliament has now shewn that its intention is to prevent oppressive and unreasonable restrictions upon the exercise of this right; that whatever may hitherto have been its full extent, it is no longer to be exercised by some to the injury of others. In other words, competition is not to be prevented or lessened *unduly*, that is to say, in an undue manner or degree, wrongly, improperly, excessively, inordinately, which it may well be in one or more of these senses of the word, if by the combination of a few the right of the many is practically interfered with by restricting it to the members of the combination."

Osler, J.A., in *Rex v. Elliott*, (1905)  
9 O.L.R. 648 at pages 661-2.

*System must be judged not "by its accidents but by its tendency . . ."*

"But the system adopted by the Electrical Estimators Ass'n is not to be judged by its accidents, but by its tendency—not by the circumstance that sometimes the members of the association made no profit, or sometimes made too much, but by what the thing was in essence that the defendants were seeking to accomplish. That thing was the prevention or lessening of competition. As pointed out by Mr. Justice Idington in the paragraphs I have quoted, the success of such an attempt would tend to destroy the incentive to struggle which is one of the conditions of advance, not only in the realm of nature, but in the realm of industry."

Raney, J., in *Rex v. Alexander Ltd. et al.*  
(1932) 57 C.C.C. 346 at pages 360-1.

*Competition—not "mere salesmanship."*

"Competition from which everything that makes for success is eliminated except salesmanship is not the free competition that s. 498 is mainly designed to protect. It brings to the customer no opportunity to buy at a lower price or on better terms, or to buy better or more attractive goods for the same money, and this is one of the principal benefits to be had from free competition. The chief factor in increasing sales under conditions such as prevailed under this arrangement is mere salesmanship."

Robertson, C.J., in *Rex v. Container Materials Ltd. et al.*, (1941) 76 C.C.C. 18 at  
pages 43-44.

*"Public is entitled to the benefit of free competition . . ."*

"Under the decision in the *Stinson-Reeb* case, the public is entitled to the benefit of free competition except in so far as it may be interfered with by valid legislation, and any party to an arrangement, the direct object of which is to impose improper, inordinate, excessive or oppressive restrictions upon that competition, is guilty of an offence."

Kerwin, J., in *Container Materials Ltd. et al., v. The King*, (1942) 77 C.C.C. 129 at  
page 141.



*"The specific public interest in free competition . . ."*

"The enactment before us, I have no doubt, was passed for the protection of the specific public interest in free competition. That, in effect, I think, is the view expressed in *Weidman v. Shragge* in the judgments of the learned Chief Justice, of Mr. Justice Idington and Mr. Justice Anglin, as well as by myself. This protection is afforded by stamping with illegality agreements which, when carried into effect, prevent or lessen competition unduly and making such agreements punishable offences; and, as the enactment is aimed at protecting the public interest in free competition, it is from that point of view that the question must be considered whether or not the prevention or lessening agreed upon will be undue."

Duff, C. J., in *Container Materials Ltd. et al. v. The King*, *Supra*, at page 134.

## (b) PUBLIC DETRIMENT vs. PRIVATE ADVANTAGE

*"That competition the benefit of which is the right of every one . . ."*

"... the prime question certainly must be, does it (the agreement alleged to be obnoxious to Section 498), however advantageous or even necessary for the protection of the business interests of the parties, impose improper, inordinate, excessive or oppressive restrictions upon that competition the benefit of which is the right of every one?"

Anglin, J., in *Weidman v Shragge*, (1912)  
46 S.C.R. 1 at pages 42-43.

*"Notwithstanding any advantage which may accrue to the business interests of the members . . ."*

"Injury to the public by the hindering or suppressing of free competition, notwithstanding any advantage which may accrue to the business interests of the members of the combine, is what brings an agreement or a combination under the ban of Section 498 Cr.C."

Mignault, J., in *Stinson-Reeb Builders Supply Co. et al., v. The King*, (1929)  
S.C.R. 276 at page 280.

## (c) TYPES OF UNDUE RESTRAINT

*Monopoly as "an undue prevention or lessening of competition . . ."*

"Can it be said that a monopoly of the whole supply, by the accused and the other dealers in the commodity associated with him, with the consequent power it would give them, whether exercised to the full for their own gain or not, is not an undue prevention or lessening of competition in the supply of the commodity? My answer to the question must be that it is a dangerous power, unfair, unreasonable and unjust towards mankind at large in the Province; towards those who might desire to trade in the commodity without joining the association and becoming a party to the wrong, and towards those who are obliged to buy—practically everyone; and, if so, it must assuredly be an undue prevention or lessening within the meaning of the statute."

Meredith, J., in *Rex v. Elliott*, *Supra*, at page 652.

*"Establishment of a virtual monopoly" banned*

"The particular sub-section with which we are concerned was plainly intended to protect the specific public interest in free competition. In applying the section the public interest in freedom of contract in commercial matters, and especially in freedom of disposition by the individual of his own labour and skill and in freedom of dealing in private property, must, of course, be kept scrupulously in view; otherwise there might conceivably be some risk of ultimately defeating the objects of the enactment by depriving the legitimate commercial energies of the country of some of their important incentives. But, giving full effect to these considerations, I have no hesitation in holding that as a rule an agreement having for one of its direct and governing objects the establishment of a virtual monopoly in the trade in an important article of commerce throughout a considerable extent of territory by suppressing competition in that trade, comes under the ban of the enactment."

Duff, J., in *Weidman v. Shragge*, *Supra*, at page 37.

*Variety of methods employed by a combination*

"There are a great many subsidiary methods commonly in use to promote the ends such combinations are directed to. Amongst those are the purchases or leases of factories to hold them in idleness; the combinations to fix prices, and to refuse to deal with any one who will neither accede thereto nor join the association, nor submit to undertaking for an observance of their rules; the restrictive contracts in sales; and the rebates given, or shifting rates of profit conditioned upon the observance of the terms imposed relative to resales and thus and thereby covering the fixed or variable prices, and the lists of parties or classes of people not to be dealt with, or alone to be dealt with."

Idington, J., in *Weidman v. Shragge*,  
*Supra*, at pages 24-25.

*"Control of the industry so as to exclude . . . competition"*

"I do not feel called upon to discuss, at length, conflicting economic theories, at least in the present case, for I do find ample evidence in the voluminous record to establish that the appellants' intention was to gain control of the industry so as to exclude (as, indeed, they succeeded in doing to a marked degree) competition in the trade, and by so doing to enable them to create a price structure based not upon the intrinsic merits of the business, that is, the cost of coal laid down at the wharf and subsequently delivered to the consumer, or the fair return upon capital invested, or upon the turnover, or upon the net profit per ton,—on the contrary, an arbitrary price structure was agreed upon, as a result of the combination, based upon American differentials (ex. P-18): and this, in my opinion, brings the agreement within the prohibitions as being undue and detrimental to the public, and also designed to restrict competition unduly between the Canadian Import Co. and the Weaver Co."

Bond, J., in *Rex v. Canadian Import Co.*,  
(on appeal) (1934) 62 C.C.C. 342 at page  
349.

(d) PRICE FIXING AND REASONABLENESS OF PRICES

*"There was no competition in price."*

"There was no competition in price. These manufacturers got together and they fixed their own prices, they and the persons who would sell their goods, and who were the only persons to sell their goods. They met from time to time and they revised their price list, and they sold those goods at just what price they pleased, only limited by the danger of putting the price so high that importations might come from the United States. There was no pretence at an honest competition, and I find that they did prevent and lessen competition in the production and in the barter and in the sale, and in the supplying of articles and commodities forming their business."

Clute, J., in *Rex v. Master Plumbers and  
Steam Fitters' Cooperative Association  
Limited et al.*, (1907) 14 O.L.R. 295 at  
page 306.

*Price fixing which "would absolutely stifle competition . . ."*

"... The evidence shows that prices were not the same at different points, but that a fixed schedule of prices was prepared for the different classes of lumber at any particular point, and if any member sold below the prices so fixed, on complaint being made, the matter was inquired into, and an attempt made to stop such selling.

It appears to me beyond question that such an attempt to fix prices is a distinct violation of sub-section (d) of section 498, and is in itself sufficient to support the conviction."

"... Not merely would the intention of the association as indicated by these by-laws if successfully carried out lessen, but it would absolutely stifle competition."

Harvey, J. A., in *Rex v. Clarke*, (1908)  
1 Alta. L.R. 358 at page 378.

*Competition as "the only effective regulator of prices . . ."*

"Parliament has not sought to regulate the prices of commodities to the consumer, but it is the policy of the law to encourage trade and commerce and Parliament has declared illegal all agreements and combinations entered into for the purpose of limiting the activities of individuals for the promotion of trade; and preventing or lessening unduly that competition which is the life of trade and the only effective regulator of prices is prohibited."

Fitzpatrick, C. J., in *Weidman v. Shragge*,  
*Supra*, at page 4.

*Fixing of prices as precluding competition*

"Having regard to the scope of the association, including all Canada as it does, the fixing of the prices of the manufacturers, the wholesalers, and the jobbers, to retailers, precludes competition in the trade of the entire product of manufactures of this industry in Canada; and it must, therefore, in my opinion, unduly restrain and injure trade and commerce in relation to such articles, contrary to clause (b), and unduly prevent or lessen competition in the purchase, barter, and sale of the same."

Clute, J., in *Dominion Supply Co. v. Robertson Mfg. Co. Ltd.*, (1917) 39 O.L.R. 495 at page 518.

*"Not necessarily the duty of the Court to inquire into and regulate prices . . ."*

"I feel bound, however, to follow the principles laid down in *Weidman v. Shragge*; *Stinson-Reeb v. The King*; *U.S. v. Trenton Potteries* and *Rex v. Alexander Ltd.* and to rule that it is not necessarily the duty of the Court to inquire into and regulate prices that may change from day to day. It is rather the duty of the Court to look into the nature of the agreement itself and to see whether it interferes with the free course of trade, or, in other words, 'what the thing was in essence that the defendants were seeking to accomplish'."

Laliberte, J., in *Rex v. Canadian Import Co.*, (1933) 61 C.C.C. 114 at page 161.

*"It is unnecessary . . . to determine what should be a fair price . . ."*

"Then, too, the defence has contended that there is no evidence whatsoever submitted by the Crown to even suggest that the prices charged were in any way unreasonable, based on the circumstances of the industry, the wages paid, and so on, so as to bring the industry as operated under the ban of section 498(c), that is, to unreasonably enhance the price thereof.

It should be noted, as was said by Bond, J., in *R. v. Canadian Import Co.*, (1935) 3 D.L.R. 330, at page 337 . . . : 'It is unnecessary for the purposes of the present cause to attempt to determine what should be a fair price for coal, even if it were feasible to do so for any particular season, and having regard to the conflict of testimony.'

The duty to inquire into and regulate prices which may change from day to day need not be imposed on the Court but rather the Court's endeavour should be to seek out the real agreement and to determine whether it interferes with the free course of trade, in short, what was the thing in essence that the defendants were seeking to accomplish, what was the purpose of Container Materials?"

Hope, J., in *Rex v. Container Materials Ltd. et al.*, (1940) 74 C.C.C. 113 at page 140.

## 2. UNITED STATES DECISIONS

Numerous cases have come before United States Courts under the Sherman Antitrust Act and related statutes and the law has been clarified by a long series of decisions of the United States Supreme Court. Like the Canadian courts, the American courts have stressed, especially in the past twenty-five years, that public detriment arising from undue or unreasonable restraints is an essential element in the offences created by the legislation. The following brief extracts are presented to illustrate in some aspects the comparable nature of the American and Canadian law. As stated by Mr. Justice Idington of the Supreme Court of Canada, "the application of tests by which to ascertain the possible evil results the Act seeks to avert may be much facilitated by a study in that regard of the jurisprudence of the United States with a commercial system and an historical development similar to but older than our own." (*Weidman v. Shragge* (1912), 46 S.C.R. 1 at page 27). The usefulness of the American decisions in this regard has been recognized by many Canadian judges, e.g. in *R. v. Container Materials Ltd.*, supra; *R. v. Canadian Import Co.*, supra; and by Duff, C. J., in *Philco Products Ltd. v. Thermionics Ltd.*, (1940) 4 D.L.R. 1 at page 2.

### (a) EFFECT ON THE PUBLIC OF RESTRAINTS ON COMPETITION

*Restraints which "prejudice the public interests . . ."*

" . . . only such contracts and combinations are within the Act as, by reason of intent or the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition or unduly obstructing the course of trade."

*Nash v. U.S.* (1913) 229 U.S. 373 at 376.



*"Purpose of the statutes is to maintain free competition . . ."*

"it has been repeatedly held by this court that the purpose of the statute is to maintain free competition in interstate commerce and that any concerted action by any combination of men or corporations to cause, or which in fact does cause, direct and undue restraint of competition in such commerce, falls within the condemnation of the act and is unlawful."

*American Column and Lumber Co., et al.*  
v. U.S., (1921) 257 U.S. 377 at page 400.

*"The interest of the public . . . is the primary consideration . . ."*

"In order to establish violation of the Sherman [Anti-Trust] Act, it is not necessary to show that the challenged arrangement suppresses all competition between the parties or that the parties themselves are discontented with the arrangement. The interest of the public in the preservation of competition is the primary consideration. The prohibitions of the statute cannot . . . be evaded by good motives . . ."

*Paramount Famous Lasky Corporation et al.*  
v. U.S., (1930) 282 U.S. 30 at page 44.

*Purpose of the Act "to prevent undue restraints . . ."*

"There is no question as to the test to be applied in determining the legality of the defendants' conduct. The purpose of the Sherman Anti-Trust Act is to prevent undue restraints of interstate commerce, to maintain its appropriate freedom in the public interest, to afford protection from the subversive or coercive influences of monopolistic endeavour. As a charter of freedom, the Act has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions which might either work injury to legitimate enterprise or through particularization defeat its purposes by providing loopholes for escape. The restrictions the Act imposes are not mechanical or artificial. Its general phrases, interpreted to attain its fundamental objects, set up the essential standard of reasonableness. They call for vigilance in the detection and frustration of all efforts unduly to restrain the free course of interstate commerce, but they do not seek to establish a mere delusive liberty either by making impossible the normal and fair expansion of that commerce or the adoption of reasonable measures to protect it from injurious and destructive practices and to promote competition upon a sound basis."

*Appalachian Coals, Inc., et al. v. U.S.,*  
(1932) 288 U.S. 344 at pages 359-360.

### (b) REASONABLENESS OF PRICES

*"The reasonable price fixed today may . . . become the unreasonable price of to-morrow . . ."*

"... whatever difference of opinion there may be among economists as to the social and economic desirability of an unrestrained competitive system, it cannot be doubted that the Sherman Law and the judicial decisions interpreting it are based upon the assumption that the public interest is best protected from the evils of monopoly and price control by the maintenance of competition.

The aim and result of every price-fixing agreement, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices. The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow. Once established, it may be maintained unchanged because of the absence of competition secured by the agreement for a price reasonable when fixed. Agreements which create such potential power may well be held to be in themselves unreasonable or unlawful restraints, without the necessity of minute inquiry whether a particular price is reasonable or unreasonable as fixed and without placing on the government in enforcing the Sherman Law the burden of ascertaining from day to day whether it has become unreasonable through the mere variation of economic conditions. Moreover, in the absence of express legislation requiring it, we should hesitate to adopt a construction making the difference between legal and illegal conduct in the field of business relations depend upon so uncertain a test as whether prices are reasonable—a determination which can be satisfactorily made only after a complete survey of our economic organization and a choice between rival philosophies."

*U.S. v. Trenton Potteries Co., (1927)*  
273 U.S. 392 at pages 397-398.

*Reasonableness of prices not an issue to be considered*

"Ruinous competition, financial disaster, evils of price cutting and the like appear throughout our history as ostensible justifications for price-fixing. If the so-called competitive abuses were to be appraised here, the reasonableness of prices would necessarily become an issue in every price-fixing case . . .

The reasonableness of prices has no constancy due to the dynamic quality of business facts underlying price structures. Those who fixed reasonable prices today would perpetuate unreasonable prices tomorrow, since those prices would not be subject to continuous administrative supervision and readjustment in light of changed conditions . . . Congress has not left with us the determination of whether or not particular price-fixing schemes are wise or unwise, healthy or destructive. It has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies. It has no more allowed genuine or fancied competitive abuses as a legal justification for such schemes than it has the good intentions of the members of the combination."

*U.S. v. Socony Vacuum Oil Co. Inc.*,  
(1940) 310 U.S. 150 at pages 221-222.

*Competition as a "trustworthy regulator of prices . . ."*

"Nor does it necessarily follow that the advance of the art, the rise in production and the decline of prices are attributable to the effects of the combination. *Post hoc, propter hoc*, is an invalid argument whether used by the plaintiff or the defendant. Anyone is free to speculate whether, in the absence of the arrangement, the stimulus of competition might not have produced far greater strides in these beneficial directions. The economic theory underlying the Sherman Act is that, in the long run, competition is a more effective prod to production and a more trustworthy regulator of prices than even an enlightened combination."

*U.S. v. National Lead Co.*, (1945) 63 F.  
Supp. 513 at page 525.

## APPENDIX II

### PRICE FORMULAE USED BY CANADIAN DENTAL TRADE ASSOCIATION AS AT SPECIFIED DATES

(REFERRED TO IN SECTION VI OF THIS REPORT)

#### December 27, 1930

"The price book formula used for the present Universal Price Book is as follows:  
Excluding goods from England, and plasters and investment compounds from  
United States, on

Goods dutiable at 10	per cent.....	add 15	per cent
Goods dutiable at 17½	per cent.....	add 22½	per cent
Goods dutiable at 20	per cent.....	add 25	per cent
Goods dutiable at 25	per cent.....	add 30	per cent
Goods dutiable at 27½	per cent.....	add 32½	per cent
Goods dutiable at 32½	per cent.....	add 37½	per cent
Goods dutiable at 35	per cent.....	add 40	per cent
Goods dutiable at 37½	per cent.....	add 42½	per cent
Goods dutiable at 40	per cent.....	add 45	per cent
Goods dutiable at 45	per cent.....	add 50	per cent"

#### March 26, 1934

(Exhibit 15)

"WITH UNITED STATES DOLLAR AT PAR

Duty 10 %	Excise 3%	Sales Tax 0%	Trans. 3%	Delivery 2%	add 19%
Duty 10 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 25%
Duty 15 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 31%
Duty 20 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 37%
Duty 22½%	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 39%
Duty 25 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 42%
Duty 27½%	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 45%
Duty 30 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 48%
Duty 32½%	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 50%
Duty 35 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 53%
Duty 37½%	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 56%
Duty 40 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 59%
Duty 45 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 64%
Duty 60 %	Excise 3%	Sales Tax 6%	Trans. 3%	Delivery 2%	add 81%"

#### March 20, 1936

(Exhibit 23)

"WITH UNITED STATES DOLLAR AT PAR

*Duty and Excise 3% and Sales Tax 6% and Trans. 3% and Delivery 2%*

Duty 0 per cent.....	No Sales Tax.....	add 6	per cent
Duty 10 per cent.....	No Sales Tax.....	add 19	per cent
Duty 7½ per cent .....		add 23	per cent
Duty 10 per cent.....		add 25	per cent
Duty 15 per cent.....		add 31	per cent
Duty 17½ per cent.....		add 34	per cent
Duty 20 per cent.....		add 37	per cent
Duty 20-10 per cent.....		add 34	per cent
Duty 22½ per cent.....		add 39	per cent
Duty 22½-10 per cent.....		add 37	per cent
Duty 25 per cent.....		add 42	per cent
Duty 25-10 per cent.....		add 39	per cent
Duty 27½ per cent.....		add 45	per cent
Duty 27½-10 per cent.....		add 42	per cent
Duty 30 per cent.....		add 48	per cent
Duty 30-10 per cent.....		add 44	per cent
Duty 32½ per cent.....		add 50	per cent
Duty 35 per cent.....		add 53	per cent
Duty 35-20 per cent.....		add 45	per cent
Duty 37½-10 per cent.....		add 52	per cent
Duty 40-10 per cent.....		add 54	per cent
Duty 60 per cent.....		add 81	per cent"

(Exhibit 29)



October 18, 1944

## "NO SALES TAX

Duty Free

add 23 per cent

## WITH SALES TAX

Duty Free—	8 per cent	.....[add]	32 per cent
[Duty]	7½ per cent	.....	41 per cent
	10 per cent	.....	44 per cent
	15 per cent	.....	50 per cent
	17½ per cent	.....	54 per cent
	20 per cent	.....	57 per cent
	22½ per cent	.....	60 per cent
	25 per cent	.....	63 per cent
	27½ per cent	.....	66 per cent
	27½ per cent less 10 per cent	.....	62 per cent
	30 per cent	.....	69 per cent
	32½ per cent	.....	72 per cent
	35 per cent	.....	75 per cent"

July 3, 1946

Duty Rate	Amount of Duty	Sales Tax 8 per cent where applicable	Incoming Transportation 3 per cent	Freight Prepayment 2 per cent	Exchange 10·5 per cent	Total per cent
Free.....	Nil	Nil	3·3	2·2	10·5	16
Free.....	Nil	8·8	3·3	2·4	10·5	25
10%.....	11·0	9·7	3·3	2·7	10·5	38
17½%.....	19·4	10·4	3·3	2·8	10·5	47
20%.....	22·2	10·6	3·3	2·9	10·5	50
22½%.....	24·9	10·8	3·3	3·0	10·5	53
25%.....	27·7	11·0	3·3	3·0	10·5	56
27½%.....	30·5	11·3	3·3	3·1	10·5	59
30%.....	33·3	11·5	3·3	3·2	10·5	62
32½%.....	36·0	11·7	3·3	3·2	10·5	65
35%.....	38·8	11·9	3·3	3·3	10·5	68

# APPENDIX III

## TARIFF RATES ON CERTAIN DENTAL GOODS

(as of July, 1947)

Item	Name and Description	British Preferential Tariff	Intermediate Tariff	General Tariff
208t	All chemicals and drugs, when of a kind not produced in Canada, which were on August 20, 1932, dutiable at rates of 15, 25 and 25 p.c., under Tariff Item 711.. Under the United States Trade Agreement..... ( <i>Acrylic monomer would enter under this item</i> ). . . . .	Free	25 p.c. 17½ p.c.	25 p.c.
220a	Chemical preparations, compounded of more than one substance, n.o.p.: (i) When dry, or liquid containing not more than two and one-half per centum of proof spirit..... Under the United States Trade Agreement..... ( <i>Most dental alloys, cements and anaesthetics would enter under this item</i> ). . . . .	15 p.c. less 50 p.c. <sup>1</sup>	25 p.c. 20 p.c.	25 p.c.
293	Plaster of Paris, or gypsum, calcined, and prepared wall plaster, the weight of the package to be included in the weight for duty... per one hundred pounds.....	Free	11 cts.	12½ cts.
359	Gold and silver, in ingots, blocks, bars, drops, sheets or plates, unmanufactured; gold and silver sweepings; and bullion fringe or gold fringe..... ( <i>Most precious metals used in dentistry would enter under this item</i> ). . . . .	Free	Free	Free
423	Electric dental engines.....	Free	30 p.c.	35 p.c.
445k	Electric apparatus and complete parts thereof, n.o.p. ( <i>Most components of dental units would enter under this item</i> ). . . . .	15 p.c.	25 p.c.	30 p.c.
446a	Manufactures, articles or wares of iron or steel or of which iron or steel or both are the component materials of chief value n.o.p..... Under the United States Trade Agreement..... ( <i>Dental chairs would enter under this item</i> ). . . . .	10 p.c. less 50 p.c. <sup>1</sup>	27½ p.c. 25 p.c.	35 p.c.
476	Surgical and dental instruments of any material: surgical needles; X-ray apparatus; microscopes valued at not less than 50 dollars each, retail; complete parts of all the foregoing.....	Free	Free	Free
618	Rubber cement and all manufactures of rubber and gutta percha, n.o.p..... Under the United States Trade Agreement..... ( <i>Rubber dam would enter under this item</i> ). . . . .	15 p.c.	25 p.c. 22½ p.c.	27½ p.c.
688	Artificial teeth, not mounted, and materials for the use only in the manufacture thereof.....	Free	Free	Free
711	All goods not enumerated in this schedule as subject to any other rate of duty, and not otherwise declared free of duty, and not being the importation whereof is by law prohibited..... Under the United States Trade Agreement..... ( <i>Artificial teeth in resin would enter under this item</i> ). . . . .	15 p.c.	25 p.c. 20 p.c.	25 p.c.

<sup>1</sup> War Exchange Conservation Act 1940—effective until October 1, 1947.









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